93d Congress, 2d Session - - - - - House Report No. 93–798

LAND USE PLANNING ACT OF 1974

REPORT

OF THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS HOUSE OF REPRESENTATIVES

TOGETHER WITH

Additional, Dissenting, and Minority Views

TO ACCOMPANY

H.R. 10294

FEBRUARY 13, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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LAND USE PLANNING ACT OF 1974

FEBRUARY 13, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HALEY, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

Together With Additional, Dissenting, and Minority Views

[To accompany H.R. 10294]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 10294) to establish land use policy; to authorize the Secretary of the Interior, pursuant to guidelines issued by the Council on Environmental Quality, to make grants to assist the States to develop and implement comprehensive land use planning processes; to coordinate Federal programs and policies which have a land use impact; to make grants to Indian tribes to assist them to develop and implement land use planning processes for reservation and other tribal lands; to provide land use planning directives for the public lands; and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Amendment No. 1. Page 1, line 4, strike out "1973" and insert in lieu thereof "1974".

Amendment No. 2. Page 2, strike out entire table of contents.

Amendment No. 3. Page 3, strike out line 1 and all that follows down through and including line 9 on page 24, and insert in lieu thereof the following:

TITLE I—ASSISTANCE TO STATES

PART A—FINDINGS, POLICY, AND PROVISION FOR GRANTS

FINDINGS

SEC. 101. The Congress finds that—

(a) there is an urgent need for land use planning in order to promote the general welfare, to secure a wise and

balanced allocation of resources, to advance social and economic well-being, and to provide for the protection and enhancement of the environment; and

(b) the present State and local institutional arrangements for planning and regulating land use of more than local impact often are inadequate, with the result that—

(1) important economic, ecological, cultural, historic, and esthetic values are being irretrievably damaged or lost;

(2) lands near or under major bodies or courses of water which possess significant natural and scenic values are being damaged by environmentally uninformed planning and development that threatens these values;

(3) key facilities such as major airports, highway interchanges, and recreational facilities are inducing disorderly development and urbanization of more than local impact;

(4) the implementation of standards for the control of air, water, noise, and other pollution is being impeded;

(5) the selection and development of sites for development and land use of regional benefit are being delayed or prevented;

(6) the usefulness of Federal and federally assisted projects and the administration of Federal programs are being impaired and the costs of such projects and programs are being unnecessarily increased;

(7) large-scale development often is creating significant and avoidable adverse impact upon the environment;

(8) significant land use decisions are being made without adequate opportunity for members of the public to be informed about the impact of or the alternatives for such decisions, or to become involved in such decisions in meaningful ways;

(9) deterioration of the environment, social, and economic viability of many urban and suburban areas is being initiated or accelerated and opportunities for enhancing the viability of both established and new urban and suburban areas are being lost;

(10) poor and unwise restrictions upon the use of land can create undesirable housing conditions, can raise the cost of shelter, reduce competition, adversely affect employment and business conditions, and impair Federal and local tax revenues, often leading to or requiring more Federal programs and greater Federal expenditures; and

(11) existing State and local land use planning, programs, and decisions often have reduced the amount of land available for housing, have limited the construction of housing, and have reduced sup-

ply and competition in the housing market, and that land use policy should encourage greater supply and competition in the housing market to lower the cost of shelter for people of all income levels.

DECLARATION OF POLICY

SEC. 102. The Congress declares that it is the policy of the Federal Government, in cooperation with the several States and their political subdivisions and other concerned public and private organizations, and in order to assure that the lands in the Nation are used in ways that create and maintain conditions under which man and nature can exist in productive harmony and under which the environmental, social, economic, and other requirements of present and future generations of Americans can be met; to use all practical means to encourage and support the establishment by the States of effective land use planning and decisionmaking processes that assure informed consideration, in advance, of the environmental, social, and economic implications of major decisions as to the use of the Nation's land and that provide for public education and involvement in such processes.

STATE LAND USE PLANNING GRANTS

SEC. 103. (a) The Secretary of the Interior is authorized to make annual grants, according to the provisions of section 108, to any State which has established an eligible State land use planning agency and an intergovernmental advisory council, to assist in the development and administration of a comprehensive land use planning process.

(b) An eligible State land use planning agency is an agency which has primary authority and responsibility for the development and administration of a comprehensive land use planning process in the State, and has a competent and adequate interdisciplinary professional and technical staff as well as special consultants of various and broad backgrounds and capacities available to it throughout the planning process.

(c) An intergovernmental advisory council shall be composed of elected officials of general purpose local government, including elected officials serving on the governing bodies of regional organizations of general purpose local governments that are responsible for regional planning and coordination. One member, by majority vote of the members, shall be chosen chairman. The council shall, among other things, have authority to participate in the development of the comprehensive land use planning process and consult, review, and comment on the comprehensive State land use planning process, and may make formal comments on annual reports which the State land use planning agency shall prepare and submit to it, which reports may detail all activities within the State conducted by the State government and local governments pursuant to, or in conformity with this Act.

PART B—COMPREHENSIVE LAND USE PLANNING PROCESS

ELEMENTS OF THE PLANNING PROCESS

SEC. 104. A comprehensive land use planning process is a planning process in which all land and other natural resources within the State and the costs and benefits of their use and conservation are taken into account, and which, among other things, provides for—

(a) development of an adequate data base for comprehensive land use planning using data available from existing sources wherever feasible;

(b) technical assistance and training programs for appropriate State and local agency personnel for the development, implementation, and management of State land use planning processes;

(c) substantial and meaningful public involvement on a continuing basis and the continued participation by the appropriate officials or representatives of local governments in all significant aspects of the planning process;

(d) coordination of the planning activities of all State agencies insofar as such activities relate to land use; the regulatory activities of all State agencies enforcing air, water, noise, or other pollution standards; and the planning activities of areawide agencies designated pursuant to regulations established under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334) and other regional agencies, if any;

(e) the establishment of a method of assuring that all State and local agency programs and services which significantly affect land use are consistent with the State comprehensive land use planning process;

(f) recognition and coordination of the planning activities of interstate agencies insofar as such activities relate to land use; the land use planning activities of local governments; in a coastal State, the planning activities under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451–1464) and the land use planning activities of Federal and public land management agencies, including specifically the planning undertaken pursuant to section 303;

(g) consideration of the following, as well as other relevant, factors:

(1) esthetic, ecological, environmental, geological, hydrological, and physical values and conditions (including soil types, water availability, and the presence of nonrenewable natural resources) that influence the desirability of various types of land use and development;

(2) recreational needs as shown in the statewide outdoor recreation plan required under section 5(8)

(d) of the Land and Water Conservation Act (16 U.S.C. 4061, et seq.);

(3) the nature and quantity of land to be used or suitable for agriculture and forestry; industry, including extractive industries; transportation and utility facilities; urban development, including the revitalization of existing communties, an adequate supply of housing within reasonable distance of employment centers, the continued growth of expanding areas, the development of new towns, the maintenance of adequate open space land in urban and suburban areas, and the economic diversification of communities which possess a narrow economic base; rural development, taking into consideration future demands for products of the land; and health services, education, law enforcement, and other State and local governmental facilities and services;

(4) the unique characteristics of areas within the State that have unusual national significance and value;

(5) the impacts on the local property tax base and revenues of State programs and activities, land use policies, and programs to be developed pursuant to this Act and the impacts of State and local tax laws on land use policies and programs; and

(6) the requirements of States, regions, and the Nation for adequate primary and secondary energy sources.

(h) criteria for the identification, and the designation pursuant to such criteria, of areas of critical environmental concern and areas suitable for or which may be impacted by key facilities; criteria for the identification of large-scale development and land use of regional benefit; and the provision of an appeal or petition procedure for local governments, and for other interested parties as defined by State law or regulation, concerning the designation or exclusion of any land in or from such areas, except when such areas are designated by State law; and

(i) development of explicit substantive State policies to guide the use of land in areas of critical environmental concern and criteria for applying the State's policies to land use decisions in such areas, which policies and criteria shall take into consideration at least—

(1) the esthetic and ecological value of wetlands for wildlife habitat, food production sources for aquatic life, recreation, sedimentation control, and shoreland storm protection;

(2) the susceptibility of wetlands to permanent destruction through draining, dredging, and filling, and the need to regulate such activities;

(3) the value of watershed land for storing and retaining or otherwise controlling runoff water, and the need for controlling development and use in a manner which does not substantially diminish such value;

(4) the value of managing upland watershed to regulate water yield and water retention;

(5) the direct and indirect costs of substantial development on flood plains and the need to restrict the hazardous, uneconomic, and unnecessary use of such areas, while preserving their recreational, esthetic, and environmental values;

(6) the direct and indirect costs of substantial development in areas of unstable soil or with high seismic activity; and the need to insure the compatibility of use and development with these factors;

(7) the undesirability of locating in areas of critical environmental concern such facilities and development as tend to encourage further development and urbanization of more than local impact;

(8) the values and characteristics of areas of critical environmental concern, their limited extent, and the desirability of permitting in such areas only such use and development as is essential and minimally disruptive of such values and which cannot feasibly be located elsewhere; and

(9) the production, conversion, transportation, use, and storage of energy and energy resources.

IMPLEMENTATION OF THE PLANNING PROCESS

SEC. 105. A comprehensive land use planning process also shall provide methods to—

(a) insure consistency of actions with the purposes, policies, and requirements of the State land use planning process; and assure that State laws, regulations, and criteria affecting development activities are in accordance with the policy, purpose, and requirements of the State land use planning process;

(b) assure that in areas of critical environmental concern—

(1) use and development will not substantially impair the historic, cultural, natural, or esthetic values or natural systems or processes within or affecting such areas and will minimize or eliminate dangers to life and property resulting from natural hazards in such areas; and

(2) substantial development is considered and approved, disapproved, or modified with reference to the State's policies and criteria developed under section 104(i) and only after appropriate public involvement;

(c) assure that all demands upon the land, including economic, social, and environmental demands, are given full consideration;

(d) control the use of land in areas which are or may be impacted by key facilities, including the site location, and the location of major improvements, and major access features of key facilities;

(e) control proposed large-scale development of more than local significance in its impact upon the environment;

(f) assure that local regulations do not unreasonably restrict or exclude development and land use of regional or national benefits;

(g) assure that public lands within the State, including but not limited to elements of the National Park, National Forest, National Wilderness Preservation, and the National Wildlife Refuge Systems, are not damaged or degraded as a result of inconsistent land use patterns in the same immediate geographical region;

(h) consider the environmental, economic, and social impact of large-scale subdivision or development projects (hereinafter referred to as "projects") as defined in section 413(q). Consideration shall include, but shall not be limited to:

(1) the problem of inconsistency of projects with the State comprehensive land use planning process;

(2) the problem arising in cases in which the developer of a project does not provide proposed improvements and amenities because the developer lacks the financial means or capability to complete proposed improvements on a timely basis;

(3) the problems arising from the imposition by projects of excessive burdens on existing municipal systems, such as those for water and power supply, waste water collection and treatment, and waste disposal;

(4) the problems arising from projects which unreasonably impair the ability of the State or local governments to supply other municipal or governmental services;

(5) those construction practices which create unreasonable soil erosion and runoff problems;

(6) the problems arising from haphazard and unplanned growth in areas of critical environmental concern; and

(7) problems associated with the absence of balanced community needs, such as open space, parks, alternative modes of transportation, and adequate housing.

(i) assure the development and implementation of a policy for influencing the location of new communities and the use of land around new communities;

(j) regulate areas and developmental activities previously listed in this section so that any source of air, water, noise, or other pollution will not be located where it would result in a violation of any applicable air, water, noise, or other pollution standard or implementation plan; and

(k) to the greatest extent practicable, assure consideration of the need for a full range of housing opportunities within the State.

MEANS OF IMPLEMENTATION

SEC. 106. (a) In complying with section 105 a State may utilize (1) direct State land use planning and regulation, (2) action of general purpose local governments under criteria and standards established by the State and subject to State administrative review with State authority to disapprove such implementation wherever it fails to meet such criteria and standards, or (3) a combination of these two techniques.

(b) States are encouraged to utilize general purpose local governments to implement section 105 and to utilize general purpose local governments, including regional units, for planning, review, and coordination purposes as to the regional implications of local plans and implementation programs. Wherever possible, States are encouraged to designate for review and comment purposes that areawide entity designated pursuant to title II of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3331–3339) or title IV of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4201–4244; 40 U.S.C. 531–535).

(c) Any method of implementation employed by the State shall include—

(1) the authority of the State to regulate the use of land within areas which, under the comprehensive land use planning process, have been designated as areas of critical environmental concern; which are, or may be, impacted by key facilities; which have been identified as presently or potentially subject to development and land use of regional benefit; or large-scale development, which use is inconsistent with the requirements of the comprehensive land use planning process as it pertains to areas of critical environmental concern, key facilities, development and land use of regional benefit, and large-scale development; and

(2) an appeals procedure for the resolution of, among other matters, conflicts over any decision or action of a local government for any area or use under the comprehensive land use planning process and over any decision or action by the State land use planning agency in the development of or under the comprehensive land use planning process: *Provided*, That the State shall bear the responsibility to demonstrate that land use decisions

or actions of local governments are inconsistent with the comprehensive land use planning process as it pertains to such areas.

(d) Nothing in this title shall be deemed to—

(1) permit a Federal agency to intercede in management decisions within the framework of a comprehensive land use planning process;

(2) enlarge or decrease the authority of a State to control the use of any land owned by the Federal Government within the State, or of any land located outside the State;

(3) enhance or diminish the rights of owners of property as provided by the Constitution of the United States; or

(4) prevent a State land use planning agency from adopting a land use control plan that uses methods other than zoning for any area under its jurisdiction, and the use of such methods shall not in themselves prevent approval for purposes of eligibility for a grant by the Secretary.

INTERSTATE COOPERATION

SEC. 107. The States are authorized and encouraged to coordinate State and local land use planning, policies, and programs, to study land use, to conduct land use planning, and to implement land use policies, on an interstate basis. Such action may be taken through existing interstate entities where the authority of such entities permits, or by negotiation of interstate compacts, with such terms and conditions, including the establishment of such public entities, as seem reasonable or appropriate, for such action. Such entities or compacts shall provide for participation of Federal and local governments and agencies as well as property owners, users of the land, and the public and shall be subject to the approval of Congress by the adoption of an appropriate Act.

PART C—FEDERAL ACTIONS

DETERMINATION OF ELIGIBILITY

SEC. 108. (a) Before making a grant to any State under section 103, the Secretary shall consider the views and recommendations of the Interagency Land Use Policy and Planning Board established under section 401 and all Federal agencies which conduct or participate in construction, development, assistance, or regulatory programs significantly affecting land use in the State and which are not represented on the Board.

(b) The Secretary shall determine the eligibility of a State for a grant not later than three months following receipt of the State's application for its grant.

(c) Prior to making any grant to a State during the three complete fiscal year period following the enactment of this Act, the Secretary shall be satisfied that such grant will be

used to develop a comprehensive land use planning process under section 104, or, if developed within the three-year period, the State is proceeding to administer it.

(d) Prior to making any further grants after the three complete fiscal year period following the enactment of this Act, the Secretary shall be satisfied that—

(1) the State has established a comprehensive land use planning process and is adequately and expeditiously administering it under sections 104, 105, and 106; and

(2) in designating areas of critical environmental concern, the State has not excluded any areas of critical environmental concern which the Secretary has determined to be of more than statewide significance.

(e) Each State receiving grants shall submit periodic reports on work completed and scheduled and such other information as the Secretary may request, including suggestions as to national land use policies.

APPEAL PROCEDURE

SEC. 109. (a) Any State which receives notice that the Secretary, in accordance with the procedures provided in this Act, has determined that the State is ineligible for grants pursuant to this Act, or, having found a State eligible for such grants, subsequently has determined to withdraw such eligibility, may, within sixty days after receiving such notice, file with the United States Court of Appeals for the circuit in which such State is located, or in the United States Court of Appeals for the District of Columbia, a petition for review of the Secretary's action. The petitioner forthwith shall transmit copies of the petition to the Secretary and the Attorney General of the United States, who shall represent the Secretary in the litigation.

(b) The Secretary shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code. No objection to the action of the Secretary shall be considered by the court unless such objection has been urged before the Secretary.

(c) The court shall have jurisdiction to affirm or modify the action of the Secretary or to set it aside in whole or in part. The court may order additional evidence to be taken by the Secretary, and to be made part of the record.

(d) Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that such judgment shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28, United States Code.

FEDERAL ACTION ABSENT STATE ELIGIBILITY

SEC. 110. Where any major Federal action significantly affecting the use of non-Federal lands is proposed after five complete fiscal years from the date of enactment of this Act, in

a State which has not been found eligible for grants pursuant to this Act, the responsible Federal agency shall hold a public hearing in such State at least one hundred and eighty days in advance of the proposed action concerning the effect of the action on land use, taking into account the relevant considerations set out in sections 104, 105, and 106 of this Act, and shall make findings which shall be submitted for review and comment by the Secretary. Such findings of the responsible Federal agency and comments of the Secretary shall be made part of the detailed statement required by section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). This section shall be subject to exception where the President determines that the interests of the United States so require.

CONSISTENCY OF FEDERAL ACTIONS

SEC. 111. (a) Federal projects and activities significantly and primarily affecting the use of non-Federal land including but not limited to permits and licenses, grant, loan, or guarantee programs, such as mortgage and rent subsidy programs and water and sewer facility construction programs, but excluding special and general revenue sharing, shall be consistent with comprehensive land use planning processes which conform to the provisions of this title, except in cases of overriding national interest as determined by the President. Procedures provided for in regulations issued by the Office of Management and Budget pursuant to the criteria specified in section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334), and title IV of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231–4233) shall be utilized in the determination of whether Federal projects and activities are consistent with comprehensive land use planning processes funded under this Act.

(b) Any State or local government submitting an application for Federal assistance for any activity having significant land use implications in an area or for a use subject to a comprehensive land use planning process in a State found eligible for grants pursuant to this title shall transmit to the relevant Federal agency the views of the State land use planning agency or the Governor, the affected local governments and the relevant areawide planning agency designated pursuant to section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 or title IV of the Intergovernmental Cooperation Act of 1968, as to the consistency of such activity with the comprehensive land use planning process, except that, if a local government certifies that a plan or description of an activity for which application is made by the local government has lain before the State land use planning agency or the Governor for a period of sixty days without indication of the views of the land use planning agency or the Governor, the application need not be accompanied by such views.

(c) Federal agencies conducting or assisting public works activities in areas not subject to a comprehensive land use planning process in a State found eligible for grants pursuant to this title shall, to the extent practicable, conduct such activities in such a manner as to minimize any adverse impact on the environment resulting from decisions concerning land use.

Amendment No. 4. Page 24, strike out line 10 and all that follows down through and including line 18 on page 27.

Amendment No. 5. Page 27, strike out line 19 and all that follows down through and including line 23 on page 30, and insert in lieu thereof the following:

TITLE II—INDIAN RESERVATION AND OTHER TRIBAL LANDS

TASK FORCE STUDY

SEC. 201. (a) The Secretary shall appoint a task force group to make a study and report on the legal, economic, social, and environmental factors related to the control and regulation, in furtherance of the intent and purpose of this Act, of Indian reservation and other tribal lands as defined in section 413(e). The Secretary shall assure that the task force group shall include representatives of concerned Federal agencies, a representative of State and local governments, and a representative of the Indian tribal community. In addition to per diem and travel expenses, the representative of the State and local governments and the representative of the Indian community shall be compensated at a rate not to exceed $100 per day when actually on the business of the task force group. Federal representatives shall serve without additional compensation.

(b) The Secretary shall submit the study and report of the task force, together with recommended legislation, to the Congress not later than two years from the date of enactment of this Act.

(c) The Secretary, on behalf of the task force, is authorized to enter into contracts and employ consultants for the purposes of this section.

Amendment No. 6. Page 31, strike out line 1 and all that follows down through and including line 3 on page 34, and insert in lieu thereof the following:

TITLE III—PUBLIC LANDS

DECLARATION OF POLICY

SEC. 301. The Congress declares it to be the policy of the United States that—

(a) the National Park, National Forest, and National Wildlife Refuge Systems, and other public lands, are vital national assets, which should be dedicated to the

benefit of both present and future generations, and managed according to applicable Federal, State, and local laws;

(b) to insure the integrity of all public land, any adjustment in the ownership or boundaries of the public lands shall be made only according to applicable Federal laws and land use plans; and

(c) there be increased coordination of public land management and planning programs with the planning processes relating to non-Federal lands significantly impacted by such programs.

INVENTORY AND IDENTIFICATION

SEC. 302. (a) Each public land management agency head shall prepare and maintain on a continuing basis, to reflect changes in conditions and identifications of resource values, an inventory of all public lands and other resources under his jurisdiction, giving priority to areas of critical environmental concern.

(b) As funds are made available, each agency head shall ascertain the boundaries of the public lands under his jurisdiction, provide means of public identification thereof including, where appropriate, signs and maps, and provide State and local governments with data from the inventory for the purpose of planning and regulating the uses of non-Federal lands in proximity to the public lands.

PUBLIC LAND USE PLANS

SEC. 303. (a) Each public land management agency head shall develop, maintain, and, when appropriate, revise land use plans for the public lands under his jurisdiction.

(b) In the development of land use plans, each agency head shall—

(1) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and social sciences;

(2) give priority to the designation and protection of areas of critical environmental concern;

(3) consider present and potential uses of the public lands;

(4) consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values;

(5) weigh long-term benefits to the public against short-term benefits;

(6) indicate the manner in which various objectives of land use are to be satisfied and the rationale for selecting a particular course of action;

(7) provide for compliance with applicable pollution control laws, including State or Federal air, water, noise, or other pollution standards or implementation plans;

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(8) consider State comprehensive land use planning processes, as well as State, local government, and private needs and requirements as related to the public lands; and

(9) when not inconsistent with the purposes for which the public lands are dedicated and administered, coordinate the land use inventory, planning, and management activities of or for public lands with the comprehensive land use planning processes of the States within which the public lands are located.

(c) Whenever existing statutory authorities are inadequate to permit the management of public lands in accordance with a land use plan developed under this section, that fact, together with recommendations, shall be reported by the agency head to the Congress.

PUBLIC INVOLVEMENT

SEC. 304. Each public land management agency head shall, on a continuing basis, provide for substantial and meaningful public involvement and participation of the appropriate officials or representatives of State and local governments in the development, revision, and implementation of land use plans, guidelines, rules, and regulations for the public lands under his jurisdiction.

Amendment No. 7. Page 34, strike out line 4 and all that follows down through and including line 5 on page 55, and insert in lieu thereof the following:

TITLE IV—ADMINISTRATION

INTERAGENCY LAND USE POLICY AND PLANNING BOARD

SEC. 401. (a) There is established the Interagency Land Use Policy and Planning Board (hereafter in this Act referred to as the "Board").

(b)(1) The Board shall be composed of an individual appointed by the Secretary of the Interior, who shall serve as Chairman; representatives of the Departments of Agriculture, Commerce, Defense, Health, Education, and Welfare, Housing and Urban Development, Transportation, and Treasury; and the Atomic Energy Commission, Federal Power Commission, Environmental Protection Agency, the Council on Environmental Quality, and the General Services Administration.

(2) The individual appointed by the Secretary shall request representatives of other Federal departments and agencies to participate in the proceedings of the Board when matters affecting their responsibilities are under consideration.

(3) The individual appointed by the Secretary shall provide for representatives of State and local governments and regional interstate and intrastate public entities that have land use planning and management responsibilities to par-

ticipate in proceedings of the Board, particularly with respect to assistance in the consideration of land use policy.

(c) The Board shall meet regularly at such times as the Chairman may direct and shall—

(1) provide the Secretary with information and advice concerning the relationship of policies, programs, and activities established or performed pursuant to this Act to the programs of the agencies represented on the Board;

(2) assist and advise the Council on Environmental Quality in issuance of guidelines under section 402(a), and the Secretary in the promulgation of rules and regulations under section 402(b);

(3) assist the Secretary in coordinating the continuing review by the agencies represented on the Board of State comprehensive land use planning processes (as they are developed and implemented);

(4) assist in the development of consistent land use plans by the several public land management agencies under section 303;

(5) provide advice on such land use policy matters as the Secretary may refer to the Board for its consideration; and

(6) submit reports, at least annually, to the Secretary on land use policy matters which may be referred to the Board by the heads of the Federal departments and agencies through their representatives on the Board.

GUIDELINES, RULES, AND REGULATIONS

SEC. 402. (a) After consultation with the Secretary, the Interagency Land Use Policy and Planning Board, the heads of departments and agencies represented on the Board, and representatives of State and local governments, not later than six months after the effective date of this Act, the Council on Environmental Quality shall issue guidelines to the Federal agencies to assist them in carrying out the requirements of this Act.

(b) Not later than nine months after the effective date of this Act, the Secretary, after consultation with representatives of States and, where appropriate, representatives of local governments and upon the advice of the Board and the heads of those departments and agencies represented on the Board, shall promulgate rules and regulations to implement the requirements of this Act and the guidelines formulated under subsection (a).

(c) An opportunity shall be afforded to the public for hearings, with adequate notice, on guidelines proposed pursuant to subsection (a) and rules and regulations proposed pursuant to subsection (b) prior to their final promulgation or subsequent revision.

(d) No guidelines, rules, or regulations proposed under this section shall take effect until they have been submitted to

the Congress, and sixty days during which the Congress is in session have passed without the adoption by both Houses of a resolution disapproving such guidelines, rules, or regulations.

RECOMMENDATIONS AS TO NATIONAL POLICY

SEC. 403. (a) The Secretary is authorized and directed to investigate and study the need for and form of stating national land use policies. In determining the desirability of developing such policies, consideration shall be given to the need for policies which—

(1) insure that all demands upon the land, including economic, social, and environmental demands, are fully considered in land use planning;

(2) give preference to long-term interests of the people of the State and Nation and insure public involvement as a means to ascertain such interests;

(3) insure the protection of the quality of the environment and provide access to a wide range of environmental amenities for all persons;

(4) encourage the preservation of a diversity of ecological systems and social, economic, and manmade environments;

(5) protect open space for public use or appreciation and as a means of shaping and guiding urban growth;

(6) give preference to development which is most consistent with control of air, water, noise, and other pollution and prevention of damage to the natural environment;

(7) insure that development is consistent with the provision of urban services, including education; water, sewer, and solid waste facilities; transportation; and police and fire protection;

(8) insure the timely siting of development, including key facilities necessary to meet national or regional social or economic requirements; and

(9) encourage the conservation and wise use of energy and other natural resources and insure the supply of such resources to meet demonstrable demand based upon such conservation use.

(b) Not later than three years after the date of enactment of this Act, the Secretary shall report to the Congress the results of the investigation and study conducted under this section, along with his recommendations of such legislation as he deems appropriate or necessary to establish national land use policies. Such report shall be based upon the suggestions of representatives of States and local governments and upon consideration of the views and recommendations of the Board and the heads of all Federal agencies which conduct or participate in construction, development, assistance, or regulatory programs significantly affecting land use, including but not limited to those agencies represented on the Board.

BIENNIAL REPORT

SEC. 404. The Secretary shall report biennially to the President and the Congress on land resources, uses of land, and current and emerging problems of land use. Such report shall include the Secretary's evaluation of the effectiveness of each State program for carrying out the policies of this Act, and shall include an assessment of the economic, social, and environmental costs imposed in each State by inappropriate use and development in areas of critical environmental concern. The report also shall include a summary of public involvement and participation by officials or representatives of local governments in all aspects of State and Federal activities pursuant to this Act.

UTILIZATION OF PERSONNEL

SEC. 405. Upon request of the Secretary, the head of any Federal department or agency is authorized to furnish the Secretary such information as may be necessary for carrying out his functions to the extent it is available to or procurable by such department or agency; and to detail to temporary duty with the Secretary on a reimbursable basis such personnel within his administrative jurisdiction as the Secretary requests, each such detail to be without loss of seniority, pay, or other employee status.

TECHNICAL ASSISTANCE

SEC. 406. The Secretary may provide, directly or through contracts, grants, or other arrangements, technical assistance to any State found eligible for grants pursuant to this Act to assist such State in the performance of its functions under this Act.

HEARINGS AND RECORD

SEC. 407. For the purpose of carrying out the provisions of this Act, the Secretary may hold such hearings, take such testimony, receive such evidence, and print or otherwise reproduce and distribute so much of the proceedings and reports thereon as he deems advisable. The Secretary is authorized to administer oaths when he determines that testimony shall be taken or evidence received under oath. To the extent permitted by law all appropriate records and papers relevant to the administration of this Act shall be made available for public inspection during ordinary office hours.

APPROPRIATION AUTHORIZATION

SEC. 408. (a) There are authorized to be appropriated to the Secretary of the Interior—

(1) for grants to the States and under title I not more than $100,000,000 for each of the eight complete fiscal

years occurring immediately after the date of enactment of this Act;

(2) for conduct of the study pursuant to title II such sums as are necessary to carry out the purposes of section 201; and

(3) exclusively for administration of this Act, $10,000,000 for each of the three complete fiscal years occurring immediately after the date of enactment of this Act.

(b) After the end of the third fiscal year occurring immediately after the date of enactment of this Act, the Secretary shall review the programs established by this Act and shall submit to Congress his assessment thereof and such recommendations for amendments to the Act as he deems proper and appropriate.

ALLOTMENTS

SEC. 409. (a) Grants to any one State made under title I shall not exceed, during any fiscal year, 75 per centum of the cost, for such fiscal year, of developing and administering the comprehensive land use planning process in such State.

(b) Grants under title I shall be allocated to the States on the basis of regulations of the Secretary which shall take into account all relevant factors, including but not limited to the amount and nature of each State's land resource base, population, pressures resulting from growth, landownership patterns, and financial need.

(c) Grants under title I shall increase, and not replace, State funds presently available for State land use planning. The remaining share of the cost shall be borne by the State in a manner and with such funds or services as may be satisfactory to the Secretary.

(d) Considering, among other factors, the degree of responsibility assumed, a State shall allocate a portion of its grant funds to the participating unit of government when a State utilizes—

(1) a local government for planning and review purposes associated with the development or amendment of State land use policies, standards, and criteria;

(2) general purpose local governments for implementation under section 105; or

(3) an interstate agency under section 107 in developing or implementing its comprehensive land use planning process.

(e) No funds granted pursuant to this Act may be expended for the acquisition of any interest in real property.

FINANCIAL RECORDS

SEC. 410. (a) Each recipient of a grant under this Act shall make reports and evaluations in such form, at such times, and containing such information concerning the status, disposition, and application of Federal funds and the development and administration of a comprehensive land use plan-

ning process as the Secretary may require; and shall keep and make available such records as may be required by the Secretary for the verification of such reports and evaluations.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of a grant that are pertinent to the determination that funds granted are used in accordance with this Act.

EFFECT ON EXISTING LAWS

SEC. 411. Nothing in this Act shall be construed—

(a) to expand or diminish Federal, interstate, or State jurisdiction, responsibility, or rights in the field of land and water resources planning, development, or control; nor to displace, supersede, limit, or modify any interstate compact, or the jurisdiction or responsibility of any legally established joint or common agency of two or more States, of a State and the Federal Government, or a region and the Federal Government; nor to limit the authority of Congress to authorize and fund projects;

(b) to change or otherwise affect the authority or responsibility of any Federal official in the discharge of the duties of his office except as required to carry out the provisions of this Act;

(c) as superseding, modifying, or repealing existing laws applicable to the various Federal departments and agencies which are authorized to develop or participate in the development of land and water resources or to exercise licensing or regulatory functions in relation thereto; nor to affect the jurisdiction, powers, or prerogatives of the International Joint Commission, United States and Canada, the Permanent Engineering Board, and the United States operating entity or entities established pursuant to the Columbia River Basin Treaty signed at Washington, January 17, 1961, or the International Boundary and Water Commission, United States and Mexico;

(d) to grant any new or additional authority with respect to the classification, segregation, change of status, or management of the public lands;

(e) to permit or deny planning, zoning, or other land use regulation on Indian reservation and other tribal lands as defined in section 413(e); or

(f) as preventing or delaying any State agency from receiving any grant to which it would be otherwise entitled under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451–1464), the provisions of this Act being in addition to and not in derogation of any other land use planning, development, or administration activity under the Coastal Zone Management Act of 1972,

with each coastal State, to the maximum extent possible, being required to coordinate any land use planning process developed by it under this Act with its coastal zone planning, management, and administration, which coordination, at the option of a State, may include joint applicability of the provisions of this Act along with the provisions of the Coastal Zone Management Act of 1972, to activities and areas in the coastal zone of any State, as defined by section 304 of the Coastal Zone Management Act of 1972, except this Act shall not be applicable to transitional and intertidal areas, salt marshes, wetlands, or beaches unless such coastal State does not have an approved program under the Coastal Zone Management Act of 1972 by June 30, 1977, and the Secretary of Commerce has not determined that such State is making satisfactory progress in developing such an approved program, but in no event shall this Act be applicable to coastal waters, as defined in the Coastal Zone Management Act of 1972, other than transitional and intertidal areas, salt marshes, wetlands, or beaches.

DEFINITIONS

SEC. 412. As used in this Act—

(a) The term "areas of critical environmental concern" means areas as defined and designated by the State on non-Federal lands or by the public land management agency head with respect to the Federal public lands, where uncontrolled or incompatible development could result in damage to the environment, life or property, or the long-term public interest which is of more than local significance. Such areas, subject to definition as to their extent, shall include—

(1) fragile or historic lands, where uncontrolled or incompatible development could result in irreversible damage to important, historic, cultural, scientific, or esthetic values or natural systems which are of more than local significance, such lands to include significant shorelands of rivers, lakes, and streams; rare or valuable ecosystems and geological formations; significant wildlife habitats; scenic or historic areas; and natural areas with significant scientific and educational values;

(2) natural hazard lands, where uncontrolled or incompatible development could unreasonably endanger life and property, such lands to include flood plains and areas frequently subject to weather disasters, areas of unstable geological, ice, or snow formations, and areas with high seismic or volcanic activity;

(3) renewable resource lands, where uncontrolled or incompatible development which results in the loss or reduction of continued long-range productivity could endanger future water, food, and fiber requirements of more than local concern, such lands to include watershed lands, aquifers and aquifer recharge areas, significant

agricultural and grazing lands, and forest lands; and

(4) such additional areas as are determined to be of critical environmental concern.

(b) The term "coastal State" means a State of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes; the term also means Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(c) The term "development and land use of regional benefit" includes private development and land use for which there is a demonstrable need affecting the interests of constituents of more than one local government which outweighs the benefits of any applicable restrictive or exclusionary local regulation.

(d) The term "general purpose local government" means any general purpose unit of local government as defined by the Bureau of Census and any regional, intergovernmental, or other public entity which is determined by the Governor to have authority to conduct land use planning on a general rather than a strictly functional basis.

(e) The term "Indian reservation and other tribal lands" means all lands within the exterior boundaries of any Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all land held in trust for or supervised by any Indian tribe as defined in subsection (f) of this section.

(f) The term "Indian tribe" means an Indian tribe, band, pueblo, colony, rancheria, or community which receives or is eligible for the special programs and services provided for Indians because of their status as Indians, including Alaska Native villages or groups as defined in the Alaska Native Claims Settlement Act (85 Stat. 688).

(g) The term "interstate agency" means a governmental agency established pursuant to law to which two or more States are a party and which carries out or is authorized to carry out programs related to land use planning or regulations, including agencies established by interstate and Federal-State compacts, river basin commissions established pursuant to the Water Resources Planning Act of 1965 (42 U.S.C. 1962–1962d–3), and multifunctional policy and planing organizations consistent with the policy in title IV of the Intergovernmental Cooperation Act of 1968.

(h) The term "key facilities" means—

(1) facilities open to the public which tend to induce development and land use of more than local impact, including but not limited to—

(A) any airport accommodating regular, scheduled air passenger service, and other airports of greater than local significance;

(B) major interchanges between limited access highways, including interchanges between the Inter-

state Highway System, and frontage access streets or highways; and

(C) major recreational lands and facilities; and

(2) major facilities on non-Federal lands for the development, generation, and transmission of energy.

(i) The term "large-scale development" means private development on non-Federal lands which, because of its magnitude or the magnitude of its effect on the surrounding environment, is likely to present issues of more than local significance in the judgment of the State. In determining what constitutes "large-scale development" the State should consider, among other things, the amount of pedestrian or vehicular traffic likely to be generated; the number of persons likely to be present; the potential for creating environmental problems such as air, water, or noise pollution; the size of the site to be occupied; and the likelihood that additional or subsidiary development will be generated.

(j) The term "large-scale subdivision or development projects" or "projects" means such division of land into lots or construction of housing units which, because of the magnitude of their effect on the surrounding environment, are likely to present issues of more than purely local significance in the judgment of the State.

(k) The term "local government" means any "general purpose local government" as defined in subsection (d) hereof or any other public agency which has land use planning authority.

(l) The term "open-space land" means any land located in or near an urban and suburban area which has value for park and outdoor recreational purposes; conservation of land and other natural resources; or historic, architectural, or scenic purposes.

(m) The term "public involvement" means the opportunity for participation by citizens of the United States in rulemaking, decisionmaking, and land use planning, including public hearings, advisory mechanisms, and such other procedures as may be necessary to provide public input in a particular instance.

(n) The term "public lands" means any lands owned by the United States without regard to how the United States acquired ownership, and without regard to the agency having responsibility for management thereof, except—

(1) lands acquired by the General Services Administration as sites for public buildings and lands which are governed by the Federal Property and Administration Services Act of 1949 and related statutes and regulations;

(2) land acquired by reason of default, foreclosure, conveyance in lieu of foreclosure, or similar circumstances, and held to protect or enforce a Federal interest arising under a contract, grant, loan guarantee, or loan insurance agreement, executed pursuant to an assistance program; and

(3) Indian reservation and other tribal lands as defined in subsection (e) hereof.

(o) The term "public land management agency" means each authority of the Government of the United States other than the Congress, the courts, possessions, and territories of the United States, the District of Columbia, or the Commonwealth of Puerto Rico that has or exercises jurisdiction over the management of the public lands of the United States.

(p) The term "Secretary" means the Secretary of the Interior.

(q) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

7. Amend the title so as to read: "A bill to establish land use policy; to authorize the Secretary of the Interior, pursuant to guidelines issued by the Council on Environmental Quality, to make grants to assist the States to develop and implement comprehensive land use planning processes; to coordinate Federal programs and policies that have a land use impact; to authorize a study of Indian reservation and other tribal lands in furtherance of the intent and purpose of this Act; to provide land use planning directives for the public lands; and for other purposes."

INTRODUCTION

Land use planning has been viewed as the product of the environmental "revolution"—the need to bring the living habits of man more into conformity with his diminishing natural habitat, the land. It is that. But what we also have come to realize is that, in the long term, land use planning is perhaps the most significant public policy step that can be taken to influence burgeoning growth patterns that since the end of World War II have been largely responsible for, among other things, a depletion of the nation's energy resources.

Undeniably, the Land Use Planning Act is path-breaking legislation in some respects, but this is no hasty product we bring to the House. For the Committee on Interior and Insular Affairs believes it had a particular responsibility to develop the legislation meticulously. Over the last three years, as bills on this subject were referred to the Committee, they were assigned to the Subcommittee on the Environment where, beginning in 1971 and continuing through 1973, a total of 15 days of hearings were held. There were 14 markup sessions on this legislation during the last Congress, and 9 Subcommittee and 10 Full Committee markups during the present Congress.

The bill the Committee today is reporting to the House is not free from all contention, for the concept of nationwide land use planning remains controversial. Nor is the bill presented as a panacea for all the evils resulting from lack of planning in the past, for such shortcomings cannot be corrected by one piece of Federal legislation. But H.R. 10294 is a bill emerging from the Committee by more than a 2 to 1 vote recommending passage, and it is a bill that has had the benefit of not only painstaking but also truly democratic action throughout its development.

A central theme of H.R. 10294 is that of public involvement. The majority of the Committee believes not only that increased land use planning should take place but also that the public should be involved at every step of the way. If we are to minimize, and solve, problems resulting from the conflict between the demand for top environmental quality and the need for energy, for example, the public should be involved in the early stages of planning. Provision needs to be made for airports and power plants as well as for protection and enhancement of the environment, without later subjecting these decisions to restraining orders sought by distraught citizens. Similarly, the Committee has tried in every way to involve the public in the development of this legislation. There has been no effort to hasten the reporting out of a bill until every objection could be heard, debated, and ruled upon.

Action on the Floor of the House is equally important. It, too, will be in full view of the public, and Representatives will be heard from who heretofore have not had an opportunity to voice their concerns. And here matters beyond the jurisdiction of the Committee on Interior and Insular Affairs must be considered—for just as land use planning cannot end abruptly at a city limit or a county boundary line, so its connotations cannot end because some programs having an effect upon land use are under the jurisdiction of agencies other than the Department of the Interior or of Committees other than the Committee on Interior and Insular Affairs. This Committee understands well that the House must now work its will as the bill progresses toward final enactment. The purpose of this report is to inform all Members as fully as possible as to what has gone before and what remains to be done if this legislation is to achieve the goals of those who advocate its passage.

BACKGROUND AND NEED

The need for a Land Use Planning Act arises along with a trend toward a revised lifestyle in the United States. We are discovering that the citizens of a Nation having but 6 percent of the world's population can no longer continue to consume 35 per cent of the world's energy, at least without making other adjustments. The haphazard growth pattern of the past a chief cause of burgeoning energy use can no longer continue. While such a course may have been acceptable when resources were thought to be unlimited, we now understand the reality of energy and other shortages.

We also now must accept the fact that, even if America's population is stabilized in numbers, new demands for the increased usage of the Nation's physical resources will be created by changes in concepts of what constitutes an acceptable standard of life and by aspirations to improve the quality of life. That this is probable was emphasized by Robert R. Nathan, speaking to a conference on public land policy and the environment:

> Even if it were to be assumed that the majority of Americans are sufficiently affluent to want or need no more material goods—an assumption of more than doubtful validity—a large minority of Americans are still far below average in terms of income and material goods and services required

> to provide them with a minimum acceptable standard of life . . .
>
> For everyone, affluent and poor, the quality of life is determined by the nature of the environment as well as the goods which they consume directly. In effect, the two are related; as we become more concerned with our environment, more and more resources will be required to improve it. Increases in production bring increased environmental problems, but they also make it possible to allocate more resources to improve the environment—physical, social, and cultural. Clean, well designed and livable cities are essential to improve the quality of city life; and clean air and clear water are more important to everyone. These conditions will be more feasible if we have the means to achieve them as well as the policies to limit or prevent their deterioration.[1]

Witnesses before the Committee testified that the United States should have a national growth policy.[2] While many Members of the Committee agree that this might be desirable, it was concluded that no attempt should be made to enunciate such a policy as a part of this bill. A growth policy can be formulated at the same time the land use planning process is getting underway.

The pattern of land use in the United States varies widely. Land use controls are uneven in character and often they are nonexistent or subject to the frequent granting of "variances" (i.e., exceptions are made). One-third of the land is publicly owned. Much of this public land is concentrated in the States west of the 100th meridian, where counties often contain over 50 per cent public land. There are many regions where public and private lands are so intermingled that it would be impossible to engage in a rational land use planning operation without directives to the public land management agencies as well as to the States. Planning is long overdue in most cases.

Reflected throughout this Nation's political, economic, and social history is the traditional concept that land is a commodity to be bought and sold, used and depleted as its owner sees fit, with a minimum of governmental involvement or guidance.

Rather than questioning this concept of land as our population increased and the pressures for the use of land became greater, governmental controls were imposed to insure survival of the concept. Usually in the form of locally-imposed zoning ordinances and building codes, these controls often were severely restrictive.

Gradually the concept of land and the effectiveness of the regulation as to its use began to be challenged. "We abuse land because we regard it as a commodity belonging to us", Aldo Leopold said nearly 30 years ago. "When we see land as a community to which we belong, we may begin to use it with love and respect."

It is the view of the Committee that there is today a pressing need for early enactment of legislation designed to assist State and local

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[1] Statement of Robert R. Nathan, Public Land Policy and the Environment National Conference, Nov. 22–24, 1970, Denver, Colo.

[2] See, for example, the statement of Archibald C. Rogers of the American Institute of Architects, U.S. Congress, House of Representatives, Committee on Interior and Insular Affairs, Subcommittee on the Environment, Hearings, 93d Cong., 1st sess., on H.R. 4862 and related bills, Mar. 26, and 27; Apr. 2, 3, and 4, 1973, U.S. Government Printing Office, Washington, D.C., Serial No. 93–8 (p. 490).

governments to improve their land use planning. Many States have embarked on such programs, but substantial encouragement and additional funding are needed if the effort is to be effective—and in time to prevent further examples of urban sprawl, mislocated jetports, and superhighways leading into congested areas that do not need an added burden of motor vehicles.

This view is shared by the Executive Branch, the States, and the counties. It was voiced by virtually all of the witnesses who appeared before the Committee over the past two and one-half years. Leading off for the Administration, Under Secretary of the Interior John C. Whitaker said:

> It is sometimes politically inept, I think, for many of us to mention priorities when we have many priorities. However, the President himself has said that land use is highest environmental priority of all the legislation he has before him.[3]

Russell E. Train, now Administrator of the Environmental Protection Agency and formerly Chairman of the Council on Environmental Quality, told the Committee that—

> The country needs this legislation now. While there are honest differences of opinion over certain provisions, . . . we cannot afford delay. . . . We need now to develop a sense of stewardship for the land. Indeed, in no area of our life as a people is there a greater opportunity for personal and community responsibility than exists with respect to land use.[4]

Robert H. Marden, President of the Council of State Planning Agencies, presented a statement of Governor Francis W. Sargent of Massachusetts, in which the Governor, in support of the land use planning legislation, called the Committee's attention to his opinion:

> Over the next 30 years, national urban growth will consume the equivalent of the areas of New Hampshire, Vermont, Massachusetts, and Rhode Island combined. By 1980, such growth will absorb land and water areas greater than the entire State of Massachusetts. The gravity of the problem is compounded by our determination to continue to construct hospitals, office buildings, homes, schools, and industrial parks as a process of expedient choice, not well-conceived planning.[5]

A State legislator, Representative Alex Sanders of South Carolina brought what he called an "awakening" point of view from the South:

> Coming to you today as I do from the cradle of the Confederacy, I suppose that you may anticipate the expressions of a stalwart of "State's rights" on the subject of land use. You might reasonably expect to hear from me the view that South Carolinians are completely competent to manage our own lands without the intervention or assistance of the Federal Government. You may even suppose that I will espouse

[3] Hearings, note 2, p. 221.
[4] Hearings, note 2, p. 242.
[5] Hearings, note 2, p. 287.

> the philosophy that an individual should be allowed to do what he wants with his own land.
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> Gentlemen, I hope that I do not disappoint you when I bring you an opinion entirely opposite. . . . I represent a priceless collection of natural resources upon which my people, lacking the material possessions of others in this Nation, have proudly proclaimed as their wealth. And we know first hand that unless far-ranging and perhaps radical steps are taken immediately, these will be forever lost to unguided economic growth and exploitation emanating from within and without South Carolina. We desperately need the coordinated and comprehensive effort which you are considering to save us from ourselves.[6]

On behalf of the National League of Cities and the U.S. Conference of Mayors, Jack Barnes, Mayor of Portsmouth, Virginia, characterized the land use planning legislation as perhaps "the most significant environmental legislation ever before the Congress" and supported the bill as:

> . . . a land use planning partnership among Federal, State, and local government, particularly for land use problems that have effects beyond the jurisdiction and capacity of local governments.

Joining Mayor Barnes in endorsing the legislation, but urging that the role of local government be strengthened in the bills as originally introduced, Lynwood Roberts, represented the National Association of Counties. He pointed out:

> . . . NACo has long recognized that comprehensive planning is essential to all counties, whether they are urban or rural, as a means for providing a management framework within which necessary, efficient, economic and satisfying land-use decisions can be made and implemented. . . . As a part of that effort, NACo has supported the concept and goals of a national land-use policy designed to strengthen the planning capability of State and local governments. . . . We offered such support before your Subcommittee in 1971 and we are doing so now.[7]

The Committee has concluded that changing land use requirements and public needs necessitate changes in present land use decision-making procedures and institutions. We believe H.R. 10294, as amended, is designed to achieve these changes without infringing upon the rights of States, or counties, or cities—or of their citizens.

LEGISLATIVE HISTORY

The land use planning act recommended by this Committee has its origins in two principal sources—the report of the Public Land Law Review Commission,[8] and the American Law Institute's Model Land

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[6] Hearings, note 2, p. 305.
[7] Hearings, note 2, p. 480.
[8] *One Third of the Nation's Land: A Report to the President and to the Congress.* The Public Land Law Review Commission, June 1970 (throughout, but particularly pp. 41–65).

Development Code.[9] The basic ideas emanating from each source have had assistance as they have been transmitted by other agents. In the case of the PLLRC report, major development took place in the Senate Committee on Interior and Insular Affairs. And the ALI code provisions were adapted in legislation submitted to the Congress by the Executive Branch as conceived by the Council on Environmental Quality. In each case, the product has been improved and it is hoped that the further refinement brought about by this Committee's hearings and lengthy markup justifies the recommendation that "the bill do pass."

The Public Land Law Review Commission Report

Nearly three years ago, the Public Land Law Review Commission completed its work and prepared its recommendations for the President and the Congress. These recommendations, contained in the Commission report, "One Third of the Nation's Land," [10] were the result of a comprehensive five-year review authorized by statute in 1964.

Perhaps the most significant chapter in the Commission report was that entitled "Planning Future Public Land Use." The Commission there recommended that Congress should establish policies and goals for the public lands and provide the management agencies with authority for carrying out the programs necessary to implement those policies and attain those goals.

Congress was urged to provide for "a continuing, dynamic program of land use planning," so that the public lands could be managed "in a manner that complements uses and patterns of use on other ownership in the locality and the region." Elaborating on this, the Commission further recommended that:

> Land use planning among Federal agencies should be systematically coordinated;
>
> State and local governments should be given an effective role in Federal agency land use planning; . . .
>
> Congress should provide additional financial assistance to public land States to facilitate better and more comprehensive land use planning;

and that

> Comprehensive land use planning should be encouraged through regional commissions along the lines of the river basin commissions created under the Water Resources Planning Act of 1965; such commissions should come into existence only with the consent of the States involved, with regional coordination being initiated when possible within the context of existing State and local political boundaries.

In January 1970, as the second session of the 91st Congress began, a member of the Public Land Law Review Commission and Chairman of the Senate Committee on Interior and Insular Affairs introduced S. 3354, the first National Land Use Policy Act.[11] In June of

[9] The American Law Institute, *A Model Land Development Code:* Tentative Draft No. 3, Apr. 22, 1971, Philadelphia.

[10] One Third of the Nation's Land: A Report to the President and to the Congress. The Public Land Law Review Commission, June 1970 (throughout, but particularly pp. 41–65).

[11] Companion bills were introduced in the House by a former member of the Public Land Law Review Commission, Representative Rogers C. B. Morton, now Secretary of the Interior, as well as by Representatives Meeds and McCarthy.

that year, the report of the Commission was officially submitted, thus formalizing among other things a basis for the land use planning legislation.

The Senate bill sought to amend the Water Resources Planning Act of 1965, by expanding the Water Resources Council into a Land and Water Resources Planning Council. The Council then would administer, in part through the river basin commissions also authorized under the 1965 Act, a grant program to require development of Statewide Land Use Plans by the several States.

After completing its hearings on S. 3354, the Senate bill was extensively modified and reported shortly before the 91st Congress adjourned sine die. As pointed out in supplementary views contained in the Senate report accompanying that bill, there was not time to obtain congressional enactment of the legislation that year, but there was value in reporting the bill "because it calls attention to a great need and provided direction in approaching it." The supplemental statement concluded as follows:

> In the next Congress, we believe our Committee should and will consider legislation which includes land use planning for all our lands, Federal and State. We believe that such legislation, by providing a concerted foundation for land use planning on lands within both the Federal and State authority will lead to the desired end: an intelligent, comprehensive system for the maximum and best use of all the lands of this country for the long-term benefit of all of the people.[11a]

The American Law Institute Model Code

As the 92d Congress got underway, the Senate bill reported out in the previous Congress was reintroduced in both Houses, and public land policy legislation, having as its objective implementation of other recommendations of the Public Land Law Review Commission also was prepared for introduction. The Executive Branch submitted legislation in related areas and hearings followed.

The Administration version of land use planning legislation was based not upon the comprehensive or Statewide theory of the Senate bill but rather upon the selective theory of the Model Code developed by the American Law Institute. The central thesis of the Model Code is that land use decisions impacting the interests of more than one local government should be subject to a decisionmaking process which includes all interests affected, whether they be Statewide or regional in nature. In order to focus on such decisions the Code recommended that States develop a process which plans and regulates areas of critical concern to the State and development and land use of more than local concern. The authors of the Model Code estimated that decisions affecting such areas and land uses might constitute 10 per cent of all land use decisions within a given State. Development and land use decisions of only local concern, approximately 90 per cent, would remain under the control of local governments.

As submitted to the Congress, the Executive Branch bill identified these areas as areas of critical environmental concern, areas impacted

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[11a] U.S. Senate, Report of the Committee on Interior and Insular Affairs, 91st Cong., 2d Sess., National Land Use Policy Act, Report No. 91–1435.

by key facilities, large scale development of more than local significance, and development and land use of regional benefit. The Administration proposed that the grant program should be administered by the Department of the Interior.

Both the House and Senate Interior and Insular Affairs Committees proceeded to markup bills containing provisions of each of the recommended versions. Attention was directed to the critical areas of the Administration's bill based on the ALI Code, but the States were at the same time directed to lay the groundwork for comprehensive planning and the Statewide idea was emphasized in the Senate bill.

The Senate bill, S. 632, passed the Senate in September 1972 after considerable debate and some 15 amendments some of which changed the character of the bill. The House bill, H.R. 7211, reached the Rules Committee during August, but no further action was taken.

When the present 93d Congress convened early in 1973, the bill that had previously passed the Senate was reintroduced in both Houses,[12] the Administration re-submitted its proposal to both Houses in revised form,[13] and there were additional versions in the House of Representatives.[14] Once again detailed hearings followed and again both Senate and House Committees have reported out their bills.

On June 17, S. 268 was adopted by the Senate. After five weeks of markup sessions by the House Subcommittee on the Environment, a "clean" bill, H.R. 10294, was introduced. The measure moved from the Subcommittee into the Full Committee in early September, 1973, and, with further amendment, was ordered reported to the House on January 22, 1974.

H.R. 10294 as amended and reported today embodies major features of all the measures considered by the Committee over the past three years. In addition, the action of the Senate has been helpful to the Committee and a number of new approaches not contemplated in previous proposals were included, thereby improving the bill reported. The major issues thus considered are discussed in the following section of this report.

This brief legislative history has concentrated on the bills referred to the Committee on Interior and Insular Affairs. However, other legislation, referred to other Committees, also has sought to address related problems. For example, the Coastal Zone Management Act of 1972, developed by the Committee on Merchant Marine and Fisheries, establishes policy and develops a program to protect the coastal zones of the Nation.

The energy crisis, being considered by a number of Congressional Committees, is not without close relationship to land use planning. We see the Land Use Planning Act as a distinct aid, not in solving the current shortage of energy fuels, but in providing a kind of orderly recognition of needs and resources that has been lacking. Siting refineries, shore facilities appurtenant to deepwater ports, and power plants is a part of the comprehensive land use planning process H.R. 10294 envisages.

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[12] S. 268, H.R. 2942.
[13] S. 294, H.R. 4862.
[14] H.R. 6460, H.R. 7233, H.R. 91, H.R. 6894, and H.R. 7986.

MAJOR ISSUES AND COMMITTEE ACTION WITH RESPECT THERETO

Procedure v. Substance

The Committee made an early decision to minimize the Federal role in the land use planning legislation. It was resolved to keep the bill essentially a procedural one—providing substantial Federal grants-in-aid with general guidelines as to eligibility requirements, but leaving the substance of land use planning to the individual States. The Secretary of the Interior, as the Federal administrator of the grant program, is given no authority to require specific land use plans or even to review the substance of such plans if they are developed by a State. Instead emphasis is placed on an *ongoing* land use *planning process.*

Although H.R. 10294 requires a State's comprehensive land use planning process to provide methods to control the use of land in areas of critical environmental concern and areas impacted by key facilities and to assure that land use of regional or national benefit is not unreasonably restricted, a State is not directed to accomplish these things by any specific means. It is anticipated that methods will vary from State to State.

H.R. 10294 encourages the States to develop, and assists them in developing those methods, procedures and a planning process which permits them to accommodate wide-ranging differences in geo-physical conditions, existing land uses, public attitudes, and political and legal practices and traditions. It is for these reasons that H.R. 10294 explicitly prohibits the Federal Government from mandating national policies, standards and criteria for inventorying, identifying and regulating areas and land uses contemplated by the bill.

In the course of the Committee's deliberations, however, a few matters of substance were added to the essentially procedural bill. The States would be required specifically to consider the environmental, economic, and social impact of large scale subdivision or development projects. And the permissive language suggesting that existing local governmental units be used in developing and implementing the comprehensive land use planning process was strengthened.

In summary, numerous substantive measures were submitted, considered, and generally rejected,[15] and in the instances when they were adopted it was believed they were required to assure implementation of the Act and also would meet with the general approval of the citizens who would be working under its provisions.

In no case does H.R. 10294 permit the Federal Government to control the use of private or State land. The role of the Federal Government is limited to insuring that the States have developed *methods* to plan and regulate land use. Neither the specific nature of those methods, substantive standards and criteria nor the decisions made by States and local governments in implementing those methods are within the scope of the Federal Government's administration of the bill.

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[15] Among those measures rejected were the stringent subdivision regulations, section 105(g) in H.R. 10294 as introduced and reported by the Subcommittee on the Environment,

The "Taking Issue"

The evolution of land use regulation has not been without legal controversy, and perhaps the most significant issue has centered on the brief admonition of the Fifth Amendment:

> . . . nor shall private property be taken for public use without just compensation.

Made applicable to the States by the Fourteenth Amendment, the "taking clause" has been repeatedly invoked—with varying degrees of success—by those who perceive a Constitutional infirmity in governmental attempts to place restrictions on what a person may do with his land. Although a majority of the Committee are convinced that neither this legislation nor the State action which will implement it need raise any valid Constitutional question, the fact that the "taking clause" has been cited by the bill's detractors necessitates this brief comment on the controversy.

At the outset, it should be noted that H.R. 10294 contains no Federal regulatory authority whatsoever with respect to the use of nonpublic land. Indeed, the bill contains specific admonitions to the effect that nothing in the act shall be deemed to permit a Federal agency to intercede in management decisions within the framework of a comprehensive land use planning process. Moreover, the bill does not attempt to grant to the States any new such authority. Whatever authority the States now have, whether it be delegated to local governmental entities or not, remains unchanged by enactment of H.R. 10294.

It is well-established that there is a distinction between a valid regulation of the use of land and a "taking" that requires compensation. Review of the myriad of court cases based on the "taking clause" reveals that the line between regulation and confiscation has not been drawn with the precision of a draftsman's pen. Rather, the distinctions are based on a multiplicity of factors including the nature of the infringement, the circumstances surrounding the regulation, and the relative significance of the public interests supporting the attempted controls. Well aware of this fact and also recognizing that it was dealing with national legislation, the Committee purposefully avoided inclusion of language which could be construed to mandate specific regulations to be applied in particular situations. To the contrary, H.R. 10294 contemplates a planning process which is guided by relatively general principles.

Under the act, the State is encouraged to impose land use controls in certain critical areas where delegation to other entities has not for one reason or another resulted in a satisfactory regulation. In enacting H.R. 10294, Congress will, therefore, be providing the framework within which the States and local governments will add the substance of a land use planning program. It is assumed that these States and local governments are capable of implementing such a program without instituting regulations of such severity that they constitute a "taking" under the Constitution. That such is the intent of Congress is clearly expressed in the legislation itself which states that nothing in the act shall be deemed to enhance or diminish the rights of owners of property as provided by the Constitution of the United States.

The Committee considered suggestions that the bill contain new authority to provide for compensation in case what has been character-

ized as "inverse condemnation." An amendment was proposed, and rejected, that would have authorized "any person having a legal interest in land, of which a State has prohibited or restricted the full use and enjoyment thereof," to petition a court to determine whether the prohibition diminishes the value of the property and "if it is so determined, full and adequate compensation of the amount of loss shall be awarded therefor." The amendment also would require a State to assure adequate funding for payment of such claims as a condition for eligibility for land use planning grants. It was the thinking of the Committee that not only do current Constitutional principles not necessitate such a provision, but that its adoption could well defeat the purposes of the Land Use Planning Act. No State likely could guarantee funds sufficient to satisfy such claims and continue to meet other responsibilities of State government. As it has been indicated, while recognizing that regulation of the use of land may raise issues under the Fifth and Fourteenth Amendments of the Constitution, the Committee believes that such issues are not presented so much in the legislation itself, as they *may* be presented in specific regulations adopted by States in the implementation of the act. There is nothing, however, in the design or substance of the legislation which would necessitate such a result and indeed, it is the Committee's belief that every principle of the act can be effectively implemented well within the bounds of the Constitution.

By the fact that it reported this bill, the majority of the Committee have expressed their opinion as to the importance of effective land use control to the preservation of the public good. By avoiding stringent regulations to be applied in all circumstances and all areas of the Nation, the Committee has expressed its understanding that land use control must carefully respect the integrity of private property. A balancing of these principles will guide the implementation of the act and such balancing is consistent with Constitutional doctrine.

The majority of the Committee have faith that the citizens of a given State, and the localities that are contained within its borders, can best solve the problems resulting from the conflicts the taking issue raises. That is why the Federal law we propose leaves the substance of these decisions to State and local governments to be judged by existing Constitutional doctrine. We are convinced that land use planning undoubtedly will enhance the value of land rather than diminish property values, particularly in the long run.

Incentives and Sanctions

Because H.R. 10294 is a procedural bill, designed to encourage States to exercise land use planning powers they already possess, it seemed to most of those urging passage of the legislation that strong incentives were required to get the States started as were sanctions to prevent them from stopping once they are started.

The major incentive proposed by the Committee is the authorization of $100 million annually for eight years for land use planning grants. The grants would be on a 75–25 per cent basis, and the eligibility requirements are in the opinion of the Committee not difficult for most States to meet (see sections 104 and 105, H.R. 10294).

Strong sanctions, to be applied if a State did not meet eligibility requirements within a specified period of time, also were considered by

the Committee, but *the final recommendation eliminated sanctions from the bill entirely.*

One early version of the legislation would have cut off all Federal programs if a State failed to live up to the requirements of the Land Use Planning Act. The first National Land Use Policy Act, introduced in 1970, provided that until there was compliance with the Act a State's allotment under certain other Federal assistance programs would be reduced at the rate of 20 per cent each year and rights-of-way or other permits to use or cross Federal lands could be denied.

H.R. 7233, one of the bills before the Committee during the present Congress, would have reduced by one-half any federally assisted programs that the Secretary of the Interior determined to have a substantial impact on land use if the State were not making adequate progress toward fulfilling the requirements of the Land Use Planning Act. At the end of five years, *no* federally assisted program having such an impact could be initiated or continued if a State did not meet the requirements of the Act.

In 1972, the Executive Branch recommended sanctions to insure a State's compliance with the Land Use Planning Act less severe than those proposed earlier. Under this proposal, the Secretary of the Interior would be authorized to terminate any financial assistance extended under the Land Use Planning Act itself, upon a finding that the State no longer meets eligibility requirements. In addition, an ineligible State would "suffer a reduction" of funds from three other Federal grant-in-aid programs at a rate of 7 per cent of its entitlement. If the situation continued to exist the following year, the reduction would be at the rate of 14 per cent, and if it persisted thereafter, the rate would be 21 per cent. Termination or withholding of funds could be deferred "if necessary for the public health, safety, or welfare," in which event the State concerned would be required to submit an acceptable schedule of compliance.

The funds subject to withholding would be (a) those under the Airport and Airway Development Act; (b) Federal-aid highway funds exclusive of planning and research; and (c) funds from the Land and Water Conservation Act of 1965, as amended. The Airport and Airway Development Act and the Federal-aid highway program were selected because of their significant impact upon land use patterns and the urbanization they generate. To balance the withholding of these development funds, and to prevent sanctions from being applied to halt necessary development, the third grant-in-aid program to which the sanctions would apply would be the Land and Water Conservation Fund which provides monies for land acquisition and development for outdoor recreation needs in the State.

The purpose of the sanctions recommended by the Administration was to insure that Federal highway, airport, and recreation facility grants would be spent in an efficient manner, avoiding the adverse impact which such facilities have created in the past through a land use planning process that regulates the location of such facilities and the development surrounding them. Since the land use legislation provides for no Federal control over substantive land use policies or decisions, a State would lose no freedom of action if it chose to accept land use planning grants under H.R. 10294.

However, if a State decided that it did not wish to develop a comprehensive land use planning process in order to avoid the problems which facilities of this type have often brought in the past, the Administration believed that it was making inadequate preparation for spending Federal money and that some of it should be withheld as a consequence.

This theory of sanctions was accepted in the 1972 land use planning bill reported by this Committee, and similar provisions were included in H.R. 10294 as cleared by the Subcommittee on the Environment again this year. However, the Committee has deleted sanctions from the bill in reporting it to the House for the following reasons:

1. Since these provisions of the bill crossed over into programs other than those over which this Committee has primary jurisdiction,[16] it appeared that either the bill would have to clear other Committees of the House or face delay before the principle of sanctions—and perhaps the bill itself—could come before the House.

2. Outside the Committee, sentiment for sanctions appears to be evenly divided, but the tendency of the Executive Branch to impound funds for other Federal programs has caused some States to have grave concern about further disturbing grant distribution formulas. Accordingly, the Governors Conference of the Council of State Governments withheld the support it had previously given to the sanctions, and urged passage without these provisions.

Nonetheless, there is strong support remaining for the sanctions, including that of environmentalist groups and some governors, legislators, and local officials. They urge the sanctions as basic to the effectiveness of the legislation, even though many of them agree that sanctions probably never would be applied against a State. The Administration continues to support the sanctions.

In supporting the Full Committee's deletion of sanctions from the bill, the principal sponsor of H.R. 10294 and Chairman of the Subcommittee on the Environment (Mr. Udall) indicated that it would be his intention to bring the matter before the Members on the Floor. A similar Floor amendment to include sanctions in S. 268 failed to pass by eight votes, so the Senate bill does not contain sanctions.

The Role of Local Government

Traditionally, any land use planning and any implementation of such planning has been done by local government. Cities, towns, counties, regional councils, and special purpose, functional agencies have developed land use plans in scattered areas throughout the United States. Standard zoning ordinances and building codes have been enacted to enforce such restrictions on the use of land as the local governments thought advisable.

It is understandable, therefore, that as the Committee proceeded to develop land use planning legislation that would require States themselves to exercise ultimate responsibilities in certain instances, rather than to continue to delegate them to local government, concern would be expressed as to what the future role of those who had thus far had experience would be.

Some witnesses before the Committee worried that in the new comprehensive land use planning process the grassroots level would be

[16] Because of this, the provisions often are referred to as "cross-over sanctions."

bypassed by some new bureaucratic State organization with no prior experience.

On the other hand, a major reason for the land use planning legislation is that local governments have not been able, through zoning ordinances and building codes, to prevent urban sprawl and leapfrogging development in pastoral land near—and often not too near—cities. Some sort of balanced approach had to be found—with the States exercising authority where only they could control the problems, but with local governmental planners and administrators taking part to the maximum extent possible to achieve the objectives of the Act.

Although the land use planning bills as introduced contemplated that local governmental units would play a significant role in the planning process, this role was strengthened during markup. As H.R. 10294 now stands, the following provisions are of significant importance to the local governments:

1. Section 103 authorizes the Secretary of the Interior to make annual planning grants to a State that has established not only an eligible State land use planning agency but also an intergovernmental advisory council. This council would be composed of elected officials from local government, and would have authority to participate in the development of the planning process, and to "consult, review, and comment" on the planning process and on annual reports, "which reports may detail all activities within the State conducted by the State government and local governments."

2. Section 104 requires a State's comprehensive land use planning process to provide for technical assistance and training programs for appropriate State and local agency personnel, and "continued participation by the appropriate officials or representatives of local governments in all significant aspects of the planning process."

3. Section 104 also recognizes the planning activities of areawide agencies designated pursuant to regulations established under the Demonstration Cities and Metropolitan Development Act of 1966.

4. Section 104(g) requires consideration of the impacts on the local property tax base of State programs and activities. And section 104 (h) requires "the provision of an appeal or petition procedure for local governments . . . concerning the designation or exclusion of any land in or from such areas (of critical concern)."

5. Section 106 encourages States to utilize general purpose local governments not only for implementation of the planning process but also for planning, review, and coordination purposes. Existing institutional arrangements rather than new agencies are contemplated here.

6. Section 106(c) requires an appeals procedure for the resolution of conflicts over any decision or action of a local government with the State being required to "bear the responsibility to demonstrate that land use decisions or actions of local governments are inconsistent" with the planning process.

7. The use of existing agencies and procedures is emphasized again in section 111, relating to the consistency of Federal actions. This requirement tends to strengthen procedures with which local governmental units are already familiar rather than to impose any new

State direction upon them. Review and comment by local governments on applications is also provided for in this section.

8. The administrative provisions of the bill in title IV emphasize significance of the local governmental role. Section 401 establishes an Interagency Land Use Policy and Planning Board, requiring representation of State and local governments and regional interstate and intrastate public entities.

9. Section 402 requires consultation with representatives of State and local governments in promulgation of guidelines.

10. The studies contemplated under section 403 are to be "based upon the suggestions of representatives of States and local governments . . ."

These provisions of H.R. 10294 have received consistent support from the National League of Cities, U.S. Conference of Mayors, National Association of Counties, and the National Association of Regional Councils, as well as the Council of State Governments.

Elements of Coordination

Almost by definition, land use planning means coordinated action. One town's plan, where it significantly affects another town, must be coordinated with the other; County A's planning program must be coordinated with that of County B; the activities with more than local significance of all the municipalities and other units of local government must be coordinated with one another and with a State's overall program; interstate coordination is particularly important where an urban area such as St. Louis or Kansas City or Washington, D.C. straddles state lines; and the myriad Federal programs must themselves be coordinated and conform to State land use planning efforts. The housing programs administered by the Department of Housing and Urban Development, highway and mass transit programs under the Department of Transportation, the antipollution measures developed by the Environmental Protection Agency, the soil and water conservation that is the responsibility of the Department of Agriculture, and the coastal zone management programs administered by the Department of Commerce all must be made to track with one another and the Land Use Planning Act.

This Committee cannot guarantee that the Land Use Planning Act will bring all of these elements together, but H.R. 10294 can provide machinery through which coordination will be possible.

H.R. 10294 contains several mechanisms designed to bring together the efforts of Federal, State, and local agencies. At the Federal level, the most significant provision is establishment, in section 401, of the Interagency Land Use Policy and Planning Board. Represented on this body are all Federal agencies having land use planning responsibilities as well as State and local governments and regional interstate and intrastate public entities.

At the Federal level, too, is the requirement that the Council on Environmental Quality, an agency of the Executive Office of the President, issue guidelines to all Federal agencies to assist them in carrying out their responsibilities under the Act (section 402(a)). The Committee knows of no way other than involvement at the highest level of the Executive Branch to insure that, for example, the Department of Housing and Urban Development, the Department of Transporta-

tion, the Environmental Protection Agency, and the Department of the Interior work together.

"Except in cases of overriding national interest as determined by the President," section 111 of the Act requires that Federal projects and activities significantly affecting land use generally be consistent with a State's comprehensive land use planning process. This section also requires State and local governmental units applying for assistance under other Federal programs to obtain the view of the State land use planning agency or governor, as well as local and areawide agencies where applicable.

The Coastal Zone Management Act of 1972, developed by the Committee on Merchant Marine and Fisheries, establishes policy and develops a program to protect the coastal zones of the Nation. H.R. 10294 includes specific provisions to protect that program. It makes clear in any case, that the provisions of H.R. 10294 should not be construed to prevent or delay grants to States under the Coastal Zone Management Act.

The provisions of H.R. 10294 are in addition to and not in derogation of the provisions of the Coastal Zone Management Act. Each coastal State should to the maximum extent possible, coordinate coastal zone planning, management, and administration with any land use planning process developed under H.R. 10294. The implementation of the Coastal Zone Management Act is a first step towards a statewide approach for managing land and water resources. In providing for coordination of its land use planning process under H.R. 10294 and coastal zone management program, coastal States should to the maximum extent permitted by both acts, insure an integrated planning and regulation process.

H.R. 10294 also authorizes and encourages States to coordinate land use planning on an interstate basis (section 107), including establishment of such interstate entities as seem appropriate.

Notwithstanding all of these and other related and similar provisions in the bill, the Committee is aware of opportunities for conflict at all levels of government. It is possible that additional legislation may be required to assist in resolving some of these conflicts that may not be amenable as the bill now stands. Government reorganization plans are sure to be of assistance here, as well as careful and coordinated Congressional oversight. In the opinion of the Committee, however, it would be a mistake to delay the beginning of a land use planning process until all possible conflicts could be eliminated.

Indian Reservation and Other Tribal Lands

In the land use planning bill reported by this Committee during the last Congress, recognition was made of the fact that there are within the United States over 90 million acres of Indian reservation and other tribal lands that would not be covered by the program of assistance to the States in developing land use planning processes.[17]

Because of various legal and factual complexities the Committee concluded that without further study it was not in a position to stipulate what type of provision should be made. Accordingly, the 1972

[17] There are 39,663,412 acres of tribal lands and lands owned by individual Indians, and 10,697,621 acres of land allotted to Indians in the lower 48 States, as well as 40,000,000 acres in Alaska identified as Indian, Aleut, or Eskimo lands.

bill authorized a study "of the need for and the form of a grant program providing for land use planning on lands held in trust by the Federal Government for the benefit of Indians, Aleuts, and Eskimos." Results of the study were to be reported to Congress within three years.[18] Because the bill was not adopted by the Congress, the study was not undertaken.

Although little reference was made to the issue of Indian lands during hearings on land use planning legislation during the present Congress, one of the bills before the Committee, H.R. 7233, contained a separate title providing for a program of assistance to the Indians, and a similar title was included in S. 268 when it was adopted by the Senate last June. In considering these measures, a number of factual and legal situations were brought to the Committee's attention among which the following are examples:

Palm Springs, California.—Land owned by non-Indians and Agua Caliente Indians throughout the City of Palm Springs resembles a crazy-quilt patchwork resulting from an original checkerboard allotment of every other section to the tribe and subsequent transfers in fee and long-term leases to non-Indians. If the Indian title in the Senate bill and in H.R. 7233 were to be adopted, it appears land use planning authority could be inappropriately vested in the tribe over lands which are interspersed with lands subject to conventional State and local authority, resulting in an institutional impediment to the implementation of an effective planning process.

Flathead Reservation, Montana.—Approximately 85 percent of the land within the Flathead Reservation is owned by non-Indians. If the S. 268/H.R. 7233 language were to prevail, the tribes apparently would assume exclusive planning and zoning authority, and a substantial majority of landowners would have no voice in the planning process.

Scottsdale/Salt River Reservation, Arizona.—Here the problem is neither with substantial non-Indian holdings nor interspacing of Indian and non-Indian lands but rather with coordination or dominance of planning authority where an Indian reservation abuts a developing metropolitan area. A decision alone as to who would have authority to plan within the Reservation boundaries would not settle the issue which involves the additional problem of coordination between the tribe and neighboring municipalities or other governmental entities.

The Navajo and Similar Indian Reservations.—Where a reservation is removed from densely populated areas and there is no substantial non-Indian ownership, it can be argued more easily that non-Indian entities within the reservation would comply with overall land use planning processes, since it is doubtful that the vesting of full planning authority in the tribe would result in unnecessary hardship or a disorganized planning process.

The Committee received conflicting opinions as to the legitimacy of an exercise of planning authority by a tribe over non-Indian lands within a reservation under current law in the absence of special Congressional grant of authority. Some lawyers contend that not only does Congress have authority to enact the S. 268/H.R. 7233 provision,

[18] H.R. 7211, 92d Cong., sec. 302(b).

but also that there is strong precedent for the proposition that Indians already possess zoning authority over privately held lands within a reservation.

By an Act commonly referred to as "P.L. 280" (Public Law 280, 28 U.S.C. 1360(b)), Congress provided that the civil and criminal laws of ten specified States would be applicable to Indian reservations within those States. There are a number of cases from Federal courts to support the proposition that P.L. 280 confers planning and zoning authority on State or local governments over Indian lands but one State appellate court has gone the other way. This issue was decided in favor of the City in a case involving the City of Palm Springs and the Agua Caliente Indian Tribe and an appeal from the Federal district court's decision is pending before the United States Ninth Circuit Court of Appeals.

In addition, there are, apparently, three other Federal statutes that would be affected by the S. 268/H.R.7233 Indian title. One of these statutes (Act of November 2, 1966, 80 Stat. 1112) deals with planning and zoning controls on lands of the San Xavier and Salt River Pima-Maricopa Indian reservations. The other two (Acts of July 2, 1948, 62 Stat. 1224, and September 13, 1950, 64 Stat. 845, respectively) extended civil and criminal law jurisdiction to Indian reservations in the State of New York.

In developing H.R. 10294, the Subcommittee on the Environment attempted to draft language acceptable to non-Indians who owned land within the boundaries of a reservation (as in the Flathead Reservation situation) and also to preserve the jurisdictional status quo as to planning and zoning authority under present law. In reviewing these efforts, the Committee believed strongly that land use planning grants extended to all other peoples of the United States should not be denied to Indians. But it reluctantly concluded that such are the factual and legal complexities that both the interests of the Indians and of the land use planning effort generally will better be served by an intensive study of these matters before attempting to establish a grant program for Indians.

Accordingly, title II of H.R. 10294 as reported by the Committee, directs the Secretary of the Interior to appoint a task force to make a study and report on the legal, economic, social, and environmental factors related to the control and regulation of the Indian reservation and other tribal lands. For purposes of this study, these lands are defined to include all lands, including land owned by non-Indians, within the reservation boundaries, so that the study will include all aspects of the problem.

The task force would include representatives of concerned Federal agencies, of State and local governments, and of the Indian tribal community. The study report is required to be submitted not later than two years from the date of enactment of the Act. Appropriations to conduct the study are authorized (section 409(a)(2)), and assurance is given that the Act is not to be construed to permit or deny planning, zoning, or other land use regulation of Indian reservation and other tribal lands (section 412(e)).

If this study is completed in a timely manner and the task force recommendations are such that they can be readily implemented by

legislation, development of land use planning processes for the Indian reservation and other tribal lands can be in phase with development of similar planning provided for under titles I (private lands) and III (public lands) of H.R. 10294. Therefore, the jurisdictional status quo, whatever it may be, is maintained pending further legislation by Congress.

Public Lands

As the Committee having primary jurisdiction over the public lands, and general oversight of the recommendations of the Public Land Law Review Commission, it has seemed proper and logical to require land use planning for the public lands at the same time it is being provided for with respect to the remaining two-thirds of the nation's land.

Title III of H.R. 10294 establishes this requirement. The Committee has made no effort to go further into the missions of the various public land management agencies, which in most cases already have been set forth by Statute. With respect to the 465 million acres of land administered by the Bureau of Land Management of the Department of the Interior, it is anticipated that additional statutory authority and guidance will be enacted by this Congress.[19]

Since additional Congressional action is required to complete the modernization of BLM organic authority, it has been argued that any reference to land use planning ought also to await such further developments. On the other hand, in Alaska and the 11 Western States, proportions of the total land varying from over 29 per cent in Montana and Washington to over 95 per cent in Alaska, are owned by the Federal Government.

Often these lands lie in a checkerboard pattern, so that any rational land use planning effort must take into account not only privately owned lands, but also State lands, public domain or national resource lands, National Forests, National Parks, and reservations managed by the Department of Defense and the Atomic Energy Commission. Governors of the Western States have recommended that the Committee include as a part of any land use planning bill some provision to require (a) that the public land management agencies engage in land use planning on the lands under their jurisdiction, and (b) that these agencies cooperate and coordinate their plans with those of the States and local communities within which the public lands lie.

Under title III of H.R. 10294, there is a general declaration of policy, assuring the sanctity of dedication of the public lands for the "benefit of both present and future generations"; that land use planning will not in itself lead to changes in the boundaries of the public lands; and requiring coordination of non-Federal and public land use planning programs. Public land management agencies are required to inventory and identify the lands under their jurisdiction; to develop, maintain, and revise land use plans for such lands; and to provide for public involvement and participation of State and local governments in development, revision, and implementation of land use plans. The final word as to what shall be done with respect to the public lands

[19] The Subcommittee on Public Lands of this Committee presently is holding hearings on a proposal submitted by the Executive Branch to the Congress, H.R. 5441, that would provide for the management, protection, development, and sale of the national resource lands, and for other purposes.

remains in the respective agencies, subject to their governing organic authority.

A Balanced Approach

"Land use control is perhaps the most pressing environmental issue before the Nation." the President said last August in transmitting to the Congress the Fourth Annual Report of the Council on Environmental Quality. "How we use our land is fundamental to all other environmental concerns."

This Committee agrees that the land use planning act is "environmental legislation." But it should be made clear that if it is viewed as environmentally-oriented legislation *only*, the term "environmental" is one that encompasses more than ecological considerations.

There are two major definitions of the word "environment" and they are not mutually exclusive. One definition is:

> The complex of climatic, edaphic, and biotic factors that act upon an organism or an ecological community and ultimately determine its form and survival.

The other major definition is:

> The aggregate of social and cultural conditions that influence the life of an individual or community."

In order to assure that the Land Use Planning Act is environmental legislation in this latter sense as well as in the former, the Committee has included balancing factors in the bill. For example, section 104 of H.R. 10294 requires the comprehensive land use planning process of a State to provide for the consideration of:

> . . . the nature and quantity of land to be used or suitable for agriculture and forestry; industry, including extractive industries; transportation and utility facilities; urban development, including the revitalization of existing communities, an adequate supply of housing within reasonable distance of employment centers, the continued growth of expanding areas, the development of new towns, the maintenance of adequate open space land in diversification of communities which possess a narrow economic base; rural development, taking into consideration future demands for products of the land; and health services, education, law enforcement, and other State and local governmental facilities and services . . .

Of particular interest, since the recognition of the Nation's energy crisis, is a provision that there also be considered:

> . . . the requirements of States, regions, and the Nation for adequate primary and secondary energy sources.

Similarly, emphasis on regulation of the use of land required under section 105 is required in five areas only one of which can be said to be "environmental" in the ecological sense alone. While this section of the bill requires a State to have methods to:

> . . . assure that in areas of critical environmental concern use and development will not substantially impair the his-

> toric, cultural, natural, or esthetic values or natural systems or processes within or affecting such areas and will minimize or eliminate dangers to life and property resulting from natural hazards in such areas . . .

it also requires methods to:

> . . . assure that all demands upon the lands, including economic, social, and environmental demands, are given full consideration;
>
> control the use of land in areas which are or may be impacted by key facilities; including the site location, and the location of major improvements, and major access features of key facilities;
>
> control proposed large-scale development of more than local significance in its impact upon the environment; and
>
> assure that local regulations do not unreasonably restrict or exclude development and land use of regional or national benefit . . .

In summary, the Committee has no objection to identification of the Land Use Planning Act as environmental legislation, and in fact believes it to be an accurate characterization. But every effort has been made to take a balanced approach to the concept of land use planning and to recognize that we are considering the *use of land* for various purposes that must be achieved, and are *not* proposing a no-growth policy. Individual States well may decide there shall be no growth or development in certain areas as a part of its comprehensive land use planning process, but this bill does not contemplate adoption of such a National policy. Balanced with the ecological considerations we believe to be important are the broader environmental concepts that will promote a wise use of land for all the purposes required by mankind.

THE ANATOMY OF LUPA—A SECTION-BY-SECTION ANALYSIS

As amended by the Committee, the proposed legislation contains four titles, covering substantive material from four major bills referred to the Committee.[20] These bills formed the basis for five days of hearings and nine markup sessions of from two to three hours duration by the Subcommittee on the Environment.[21] Last September, the Subcommittee's recommended action was forwarded to the Full Committee in the form of a clean bill, H.R. 10294, which has been the subject of 10 additional markup sessions.

As presented to the House, the Committee proposal would in effect strike out all after the enacting clause of H.R. 10294, inserting in lieu thereof seven substantive amendments. However, the basic design and thrust of H.R. 10294 remain as envisioned by the Subcommittee.

SHORT TITLE

The short title of the Act is "Land Use Planning Act of 1974."

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[20] H.R. 2942 (identical to S. 268 as introduced), H.R. 4862, H.R. 6460 and H.R. 7233.
[21] Hearings were held March 26 and 27, and April 2, 3, and 4, 1973. Footnote 2 *supra*.

TITLE I—ASSISTANCE TO STATES

PART A—FINDINGS, POLICY, AND PROVISIONS FOR GRANTS

SECTION 101 FINDINGS

This section sets forth briefly two basic congressional findings that in the opinion of the Committee require enactment of this bill.

The first finding is that there is "an urgent need for land use planning in order to promote the general welfare, to secure a wise and balanced allocation of resources; to advance social and economic well-being, and to provide for the protection and enhancement of the environment."

The second finding is that present State and local planning and regulating land use of more than local impact is "often inadequate", and has resulted in the damaging of important values; inducing disorderly development and urbanization; impeding implementation of anti-pollution standards; delaying or preventing development and land use of regional benefit; impairing usefulness of Federal programs; causing significant and avoidable adverse environmental impact; failing to involve the public in significant land use decisions; deteriorating of urban and suburban areas; resulting in undesirable housing, adverse business and employment conditions; and impairing of tax revenues "often leading to or requiring more Federal programs and greater Federal expenditures", and reducing housing rather than encouraging "a greater supply and competition" in the housing market "to lower the cost of shelter for people of all income levels."

SECTION 102—DECLARATION OF POLICY

This section declares it to be Federal policy, in order to assure harmonious use of the lands to meet requirements of present and future generations, to encourage and support the States to establish effective land use planning and decision-making processes which provide for public involvement.

SECTION 103—STATE LAND USE PLANNING GRANTS

The Secretary of the Interior here is authorized to make annual grants to a State having an "eligible State land use planning agency" and an "intergovernmental advisory council" to assist in development and administration of a "comprehensive land use planning process."

An eligible State land use planning agency is defined as one having primary authority and responsibility for development and administration of a comprehensive land use planning process and having a "competent and adequate interdisciplinary professional and technical staff as well as special consultants" available to it throughout the planning process. In so describing the character of this agency, the Committee seeks to make clear that something more than a "State Planning Department", common in many States in the past, is required to retain eligibility under the Land Use Planning Act. The emphasis is on *land use* planning rather than *program* planning; also the elements of competence and varied disciplines on the agency staff are of particular significance.

It is anticipated that a State may desire to delegate certain functions to other, perhaps existing departments and agencies. For example, a State Water Board might well play a significant role, since land use planning without planning for water needs would be ineffective. At the same time it is important that the Secretary of the Interior have one, primary agency with whom to deal in administering the grant program. And it is the hope of the Committee that States will, to the maximum extent feasible, consolidate requirements for clearance and permits in one central office, so that "one stop" service will be available for those undertaking development.

This section also provides that an Intergovernmental Advisory Council, composed of elected officials of general purpose local government, shall participate in development of the comprehensive land use planning process, and comment on reports submitted to it by the State land use planning agency. This is a first basic step to assure that continued participation by appropriate officials or representatives of local government will be a part of a State's comprehensive land use planning process.[22]

Part B—Comprehensive Land Use Planning Process

The four sections in this part of title I provide for the development of a comprehensive land use planning process and the subsequent administration or implementation of the process. These sections also set forth certain requirements as to use and development in accordance with the comprehensive land use planning process. Where the term "development" is used in this latter sense it means, in the context of the American Law Institute Model Code,[23] the dividing of land into two or more parcels, the carrying out of any building or mining operation, or the making of any material change in the use or appearance of any structure or land. Development includes, but is not limited to erection construction, redevelopment, alteration or repair. When appropriate to the context, development refers to the act of developing or to the result of development.

SECTION 104—ELEMENTS OF THE PLANNING PROCESS

This section of the Act defines a comprehensive land use planning process as one taking into account all land and other natural resources within the State as well as the costs and benefits of their use and conservation, and providing among other things for—

(a) development of an "adequate data base";

(b) technical assistance and training programs;

(c) "substantial and meaningful" public involvement on a continuing basis and continued participation of local governmental personnel in all significant aspects of the planning process;

(d) coordination of planning and regulatory activities of State and area-wide agencies;

(e) a method to assure that State and local agency program and services significantly affecting land use are consistent with the comprehensive land use planning process;

[22] See detailed discussion, "The Role of Local Government," p. 35, this report.
[23] See discussion of ALI Model Code, p. 29.

(f) recognition and coordination of land use planning activities of interstate agencies, local governments, public land management agencies, and (in a coastal State) the planning activities under the Coastal Zone Management Act;

(g) consideration of various conditions, needs, projections, and unique characteristics, impacts on property tax base and of the laws, and requirements for adequate primary and secondary energy sources;

(h) criteria for identification, and designation pursuant to such criteria, of areas of critical environmental concern, areas suitable for or which may be impacted by key facilities; criteria for identification of large-scale development and land use of regional benefit; and provisions for an appeal or petition for local governments and other interested parties concerning designation or exclusion of any land in or from such areas, except when they are designated by the State; and

(i) development of explicit substantive State policies and criteria to guide land use in areas of critical environmental concern.

SECTION 105—IMPLEMENTATION OF THE PLANNING PROCESS

A State's comprehensive land use planning process also must provide methods to—

(a) insure consistency of actions and assure development in accordance with the comprehensive land use planning process;

(b) assure that use and development will not substantially impair areas of critical environmental concern, and assure that substantial development is considered pursuant to the State's explicit policies developed under section 104(i).

(c) assure full consideration of economic, social, environmental, and other demands upon the land;

(d) control the use of land in areas impacted by key facilities;

(e) control proposed large-scale development of more than local significance (for example, shopping centers) in its impact upon the environment;

(f) assure that regulations do not unreasonably restrict or exclude development and land use of regional or national benefit;

(g) assure that public lands are not damaged or degraded;

(h) consider the environmental, economic and social impact of large-scale subdivision or development projects;

(i) assure developing and implementation of a policy for influencing location and use of land around new communities;

(j) regulate development so pollution sources will not be located where violation of air, water, noise, or other pollution standards would result; and

(k) to the greatest extent practicable, assure consideration of the need for a full range of housing opportunities within the State.

SECTION 106—MEANS OF IMPLEMENTATION

This section first of all provides that in implementing its comprehensive land use planning process a State may utilize

(a) direct State land use planning and regulation,

(b) action of general purpose local governments under criteria and standards established by the State and subject to State review (including authority to disapprove implementation whenever it fails to meet criteria and standards), or

(c) a combination of these two techniques.

Secondly, the States are encouraged to use general purpose local governments to implement the planning process and for planning, review, and coordination as to regional implications.

Thirdly, the section requires implementation to include State authority for regulation of the use of land in certain areas and for an appeals procedure.

Finally, the section prohibits Federal agencies from interceding in management decisions within the framework of a comprehensive land use planning process; disclaims any enlargement or reduction of State authority over Federal land or lands outside the State boundaries; disclaims any enhancement or diminishing of property rights under the Constitution; and indicates that a State may use methods other than zoning as a means of land use control.

It is the intention of this Committee, in these disclaimer provisions, to make it clear that it is not the purpose of this Act to change the status of property rights that exist in a particular State on the date of enactment. It is further the intention of the Committee to emphasize that flexibility and innovation in the comprehensive land use planning processes is permitted and expected. In addition to the traditional method of land use control known as zoning, it is contemplated that States will explore additional land use control techniques such as taxing policies, capital development programs, permit systems, public land trusts, and transferrable development rights where appropriate. Some goals of land use planning also may be reached through covenants and easements. Whatever combination of techniques is adopted by a State, the implementation methods must at a minimum include authority of the State to regulate the use of land in areas of critical environmental concern and areas impacted by key facilities, and with respect to large scale development, and development and land use of regional or national benefit. This will assure compliance with the requirements of the comprehensive land use planning process as it pertains to such areas and uses, under traditional State powers to provide for health, safety, and welfare.

SECTION 107—INTERSTATE COOPERATION

This section authorizes and encourages interstate cooperation through existing entities or by negotiation of new compacts subject to congressional approval. Although the bill requires that Federal grants be paid over directly to the eligible State agencies, it is anticipated that States will need to cooperate actively in many cases to consider land use planning situations that know no boundaries. Where new interstate compacts are negotiated to accomplish such cooperation, they would be subject to congressional approval in the usual manner.

PART C—FEDERAL ACTIONS

SECTION 108—DETERMINATION OF ELIGIBILITY

Prior to making any land use planning grant, the Secretary is required to consider the views and recommendations of the Interagency Land Use Policy and Planning Board and of all Federal agencies involved in programs significantly affecting land use but not repre-

sented on the Board. He must then determine eligibility of a State not later than three months after its application is received.

Prior to making a grant during the first three years after the Act goes into effect, the Secretary must be satisfied that the grant will be used to develop a comprehensive land use planning process; or, if developed within the three-year period, the State is proceeding to administer it.

After the first three years, before making a grant, the Secretary must be satisfied that the comprehensive land use planning process has been established, that it is being "adequately and expeditiously administered," and that no areas of critical environmental concern of more than statewide significance are excluded. In connection with this provision, the Committee believes the Secretary should, no later than two years from the date of enactment of the Act, and after consultation with the States and opportunity for public involvement, submit to each State a description of areas of critical environmental concern within such State that are of more than statewide significance, accompanied by the Secretary's reasons for making his determination. By following such a procedure, a State cannot be surprised or taken unaware by enforcement of a hastily made ruling that would affect eligibility under the Act.

Each State also would be required to submit periodic reports to the Secretary, including suggestions as to national land use policies.

SECTION 109—APPEAL PROCEDURE

This section authorizes a State found ineligible for grants to appeal to the United States Circuit Court of Appeals; requires the Secretary to file his record of proceedings in the court; provides that no objection shall be considered unless previously urged before the Secretary; authorizes the court to order additional evidence taken and made a part of the record and to affirm, modify, or set aside the action of the Secretary in whole or in part; gives exclusive jurisdiction to the court; and provides for review by the Supreme Court.

Although Federal action is limited to approving or withholding of grants, the Committee contemplates that such authority as is placed in the Secretary shall be exercised responsibly. It is therefore necessary to provide an effective appeals procedure so that arbitrary and capricious action will not be possible.

SECTION 110—FEDERAL ACTION ABSENT STATE ELIGIBILITY

Where a State is found ineligible for grants, this section requires any Federal agency proposing "any major Federal action significantly affecting the use of non-Federal lands" after five years from the date of enactment to hold a public hearing, make findings, and submit them to the Secretary for review and comment.

The purpose of this section is to provide a form of suasion short of sanctions to persuade a State to take advantage of the provisions of this Act. The findings and comments would be made part of the detailed statement required under the National Environmental Policy Act. If the President were to determine that the interests of the United States so require, this section would be subject to exception.

SECTION 111—CONSISTENCY OF FEDERAL ACTIONS

This section requires (a) that "Federal projects and activities significantly affecting land use" generally be consistent with a State's comprehensive land use planning process "except in cases of overriding national interest as determined by the President"; (b) State and local governmental units applying for assistance under other Federal programs to obtain the view of the State land use planning agency or Governor, as well as local and areawide agencies where applicable; and (c) Federal agencies conducting or assisting public works activities in areas not subject to a comprehensive land use planning process to conduct their activities "in such a manner as to minimize any adverse environmental impact."

The Committee is well aware that actions of the Federal government often have contributed to the problems that point up the need for this Act. Federal programs administered by one Federal agency conflict with those administered by another, and many Federal programs conflict with State and local goals. It is hoped provisions of this section will minimize if not eliminate such actions in the future.

TITLE II—INDIAN RESERVATION AND OTHER TRIBAL LANDS

SECTION 201—TASK FORCE STUDY

This section directs the Secretary to appoint a task force group to study and report on the legal, economic, social, and environmental factors related to the control and regulation, "in furtherance of the intent and purpose of this Act," of Indian reservation and other tribal lands. The task force group is to include representatives of "concerned Federal agencies, a representative of State and local governments, and a representative of the Indian tribal community." Per diem, travel expense, and, in the case of the Indian community representative, $100 per day are provided for.

The Secretary is authorized to enter into contracts and employ consultants as required, and is directed to submit the study report along with recommended legislation to the Congress within two years.

The Committee has highlighted this study as a separate title of the Act to emphasize its conviction that the Indian lands should be brought into the nationwide land use planning program as soon as possible. It is anticipated that the study will enable Congress to consider the establishment of grants for the tribes shortly after submission of the report.

TITLE III—PUBLIC LANDS

SECTION 301—DECLARATION OF POLICY

This section declares it to be the policy of the United States that—

(a) National Park, National Forest, and National Wildlife Refuge Systems, and other public lands, are vital national assets, which should be dedicated to the benefit of both present and future generations, and managed according to applicable Federal, State, and local laws;

(b) the integrity of the public lands should be insured by permitting adjustment in the ownership or boundaries only according to applicable Federal laws and land use plans; and

(c) there should be increased coordination of public land management and planning programs with the planning processes relating to non-Federal lands significantly impacted by such programs.

SECTION 302—INVENTORY AND IDENTIFICATION

This section requires preparation and maintenance of an inventory of the public lands and resources. It directs public land management agency heads to ascertain boundaries of lands under their jurisdiction "as funds are made available," to provide means of public identification thereof, and to provide State and local governments with data from the inventory for the purpose of planning and regulating uses of non-Federal lands in proximity to the public lands.

SECTION 303—PUBLIC LAND USE PLANS

Each public land management agency head is directed to develop, maintain, and, when appropriate, revise land use plans for the public lands under his jurisdiction.

The agency heads, in developing land use plans, are required to use a systematic interdisciplinary approach; give priority to designation and protection of areas of critical environmental concern; consider present and potential uses of the public lands; consider relative scarcity of values involved and availability of alternative means and sites for realization of those values; weigh long-term benefits to the public against short-term benefits; indicate the manner in which objectives are to be satisfied and the rationale for selecting a particular course of action; provide for compliance with applicable pollution control laws; consider comprehensive land use planning processes and State, local, and private needs and requirements as related to the public lands; and when not inconsistent with the purposes for which the public lands are dedicated and administered, coordinate inventory, planning, and management with the planning processes of the State within which the public lands are located.

This section also requires that agency heads, "whenever existing statutory authorities are inadequate to permit the management of public lands in accordance with a land use plan"—to report that fact, together with recommendations to the Congress. The Committee cannot stress too strongly that, while it favors the development of a public land use planning program, closely coordinated with that urged upon the States for the non-Federal lands, it does not by this Act change, attempt to change, or impute by implication any new public land management authority. On the contrary, we anticipate that new authority may be necessary and it is for this reason the public land management agencies are directed to report such needs to the Congress as they arise. It is a constitutional responsibility of the Congress to establish policy for the public lands and to provide statutory guidelines to implement the policy. This section gives added notice of that fact.

SECTION 304—PUBLIC INVOLVEMENT

Each public land management agency head is required on a continuing basis to provide for substantial and meaningful public involvement and participation of State and local governments in development, revision, and implementation of land use plans. By setting forth this requirement as a separate section, the Committee once again emphasizes its conviction that the citizens of the Nation should be involved on a timely basis not only with land use planning as it pertains to their own, privately-owned lands but also should have a voice with respect to the public lands in which they hold a common interest.

TITLE IV—ADMINISTRATION

SECTION 401—INTERAGENCY LAND USE POLICY AND PLANNING BOARD

This section establishes an Interagency Land Use Policy and Planning Board composed of an appointee of the Secretary of the Interior as Chairman, and representatives of 12 agencies—the Departments of Agriculture; Commerce; Defense; Health, Education, and Welfare; Housing and Urban Development; Transportation; and Treasury; the Atomic Energy Commission, Federal Power Commission, Environmental Protection Agency, General Services Administration, and the Council on Environmental Quality. Other agency participation is provided for when matters affecting their responsibilities are under consideration. State and local governments and regional entities having land use planning and management responsibilities also would participate.

The Board is to meet regularly and is directed to provide information and advice concerning the relationship of land use planning to programs of agencies represented on the Board, to assist CEQ and the Secretary of the Interior in promulgation of guidelines and rules and regulations, assist in the development of consistent public land use plans, provide advice on such land use policy matters as are referred to it by the Secretary, and submit reports to the Secretary on land use policy matters referred through agency representatives on the Board.

As examples of how the Board will function, it is here that the Coastal Zone Management Act program can be coordinated with land use planning; and that HUD will be able to assure that State land use planning processes are more effectively coordinated with the Nation's housing goals.

SECTION 402—GUIDELINES, RULES, AND REGULATIONS

This section directs the Council on Environmental Quality within six months to issue guidelines and the Secretary of the Interior within nine months to promulgate rules and regulations to implement the Act. In each case public involvement and consultation with the Board, Federal agency heads, and representatives of State and local governments are required. The section also provides that no guidelines, rules, or regulations shall take effect until they have been submitted to Congress and sixty days have passed without disapproval by both Houses.

The guidelines are to be issued by an agency within the executive office of the President because their primary purpose is to provide direction for all of the Federal agencies involved, and the Committee believes it would be inappropriate—and probably ineffective—if this responsibility were placed upon the Secretary of the Interior. On the other hand, as head of the agency selected to administer this Act, it is appropriate that he be required to promulgate the rules and regulations that will implement the requirements of the Act.

The deadlines—of six months for CEQ and nine months for the Secretary—are imposed to avert delay. The congressional "veto" is provided for as a safeguard to assure that the merely procedural but far-reaching responsibilities under this Act are not abused.

SECTION 403.—RECOMMENDATION AS TO NATIONAL SECURITY

Under this section, the Secretary is directed to study the need for and form of stating national land use policies to:

(1) insure that all demands are considered in land use planning;

(2) give preference to long-term interests and insure public involvement as a means to ascertain such interests;

(3) insure protection of environmental quality and provide access to a wide range of environmental amenities;

(4) encourage preservation of a diversity of ecological systems and social, economic, and man-made environments;

(5) protect open space;

(6) give preference to development which is most consistent with pollution control and environmental protection;

(7) insure that development is consistent with necessary urban services;

(8) insure timely citing of key facilities and other developments; and

(9) encourage conservation of energy and other natural resources while meeting demonstrable demand based upon wise use.

The report is to be based upon suggestions of representatives of States and local governments and the public, as well as the Board and heads of agencies involved in programs affecting land use.

The Secretary is required to complete the study within three years, and to recommend appropriate legislation.

SECTION 404—BIENNIAL REPORT

This section requires the Secretary to submit a biennial report to the President and the Congress on land resources, uses of land, and land use problems, including assessment of economic, social, and environmental costs. The report also is required to include a summary of public involvement and participation by officials or representatives of local governments "in all aspects of State and Federal activities pursuant to this Act."

SECTION 405—UTILIZATION OF PERSONNEL

This section provides for Federal agencies to furnish the Secretary with necessary information and temporary detail of personnel on a reimbursable basis.

SECTION 406—TECHNICAL ASSISTANCE

This section authorizes the Secretary to provide, directly or through contracts, grants, or other arrangements, technical assistance to any State found eligible for grants, to assist such State in the performance of its functions under the Act.

SECTION 407—HEARINGS AND RECORD

The Secretary is authorized by this section to "hold such hearings, take such testimony, receive such evidence, and print or otherwise reproduce and distribute so much of the proceedings and reports thereon as he deems advisable." He is also authorized to administer oaths when necessary and is required to the extent permitted by law to make available for public inspection "all appropriate records and papers relevant to administration" of this Act.

SECTION 408—APPROPRIATION AUTHORIZATION

Appropriations are authorized to the Secretary of the Interior as follows:

(a) for grants to the States under title I not more than $100 million for each of the eight complete fiscal years occurring immediately after the date of enactment;

(b) for conduct of the study pursuant to title II such sums as are necessary to carry out the purposes of section 201 (the task force study and recommendations as to Indian reservation and other tribal lands); and

(c) exclusively for administration of the Act, $10 million for each of the three complete fiscal years occurring immediately after the date of enactment. At the end of the third fiscal year, the Secretary is directed to review the programs established under the Act and submit to Congress "his assessment thereof and such recommendations for amendments as he deems proper and appropriate."

In authorizing eight years of appropriations for the grant program, the Committee is attempting to assure the States that, once they begin development of their land use planning processes, it is likely that Federal support will continue for a period of time sufficient to put the program into effective operation. In authorizing three years of appropriations for administration, the Committee is providing ample funds to get the program underway but at the same time is retaining control over its substance so that the Secretary will be required to return to Congress for continued justification of administrative funding. It is anticipated that changes will be needed—for example, grants for Indian tribes may need to be authorized—and the Committee wants assurance that the program will be evaluated in a timely manner so that Congress may consider the proposed changes.

SECTION 409—ALLOTMENTS

This section provides that the grants to the States shall not exceed during any fiscal year 75 per cent of the cost of developing and administering the comprehensive land use planning process.

Grants are to be allocated on the basis of a State's land resource base, population, land ownership patterns, extent of areas of critical environmental concern, financial need, and other relevant factors.

The section also stipulates that grants shall be in addition to, rather than as a replacement of, other funds available for land use planning. The remaining share of the cost is to be borne by the State "in a manner and with such funds or services as may be satisfactory to the Secretary." None of the grant funds may be used for acquisition of any interest in real property.

This section also requires a State "considering among other factors the degree of responsibility assumed," to allocate grant funds to local governments, general purpose local governments, or interstate agencies if they are utilized where permitted under the Act for planning, review, or implementation of the planning process.

SECTION 410—FINANCIAL RECORDS

This section requires grant recipients to keep records as prescribed by the Secretary and to make them available for audit. It authorizes access to records by the Secretary and the Comptroller General.

SECTION 411—EFFECT ON EXISTING LAWS

This section establishes five basic relationships between H.R. 10294 and existing law:

(a) that H.R. 10294 has no effect on the existing authority or responsibility of any Federal, State, interstate, or regional officer or entity operating in the field of land or water resources planning, development, or control;

(b) that H.R. 10294 has no effect on the existing jurisdiction and prerogatives of certain international agreements to which the United States is a party, such as the International Boundary and Water Commission, United States and Mexico;

(c) that H.R. 10294 does not grant any new or additional authority with respect to the classification, segregation, change of status, or management of the public lands;

(d) that H.R. 10294 has no effect on planning, zoning, or other land use regulation on Indian reservation and other tribal lands; and

(e) that H.R. 10294 shall not be construed to prevent or delay a State from receiving any grant under the Coastal Zone Management Act, each coastal State, to the maximum extent possible being required to coordinate the land use planning process developed under H.R. 10294 with its coastal zone planning, management, and administration. Together with other references in the bill the Coastal Zone Management Act or to coastal States, the effect of this provision is to draw a line between those areas to which the CZMA and the Land Use Planning Act are applicable. The CZMA applies to transitional and intertidal areas, salt marshes, wetlands, or beaches, and to coastal waters; H.R. 10294 applies to all other lands. However, if a State does not have an approved program under the CZMA and is not making progress toward developing such a program, after June 30,

1977, H.R. 10294 also will apply to transitional and intertidal areas, salt marshes, wetlands, or beaches.

SECTION 412—DEFINITIONS

The 17 definitions in this section generally fall into three categories:

1. definitions concerning the five kinds of areas and uses that require methods of identification under section 104 and control under section 105, including "areas of critical environmental concern," "development and land use of regional benefit," "key facilities," "large-scale development," and "large-scale subdivision or development projects";

2. definitions concerning the units of government and types of land that will be involved in the land use planning process, including "coastal State," "general purpose local government," "Indian reservation and other tribal lands," "Indian tribe," "interstate agency," "local government," "public lands," "public land management agency," and "State"; and

3. other conceptual terms including "open-space land," "public involvement," and "Secretary" (meaning the Secretary of the Interior throughout unless otherwise indicated in the text of the bill).

COST OF THE LEGISLATION

In compliance with clause 7 of Rule XIII of the Rules of the House of Representatives, the Committee estimates the following costs will be incurred in carrying out the provisions of H.R. 10294:

Current fiscal year.—In view of the short period of time that will remain between the date of enactment and the beginning of the 1975 fiscal year, it is anticipated there will be not in excess of $1.25 million cost incurred to initiate the program during the current fiscal year.

Fiscal years 1975–1976.—It is estimated that $1 million per year for a period of two years, thus totalling $2 million, will be required to fulfill the requirements of title II to conduct a task force study of the legal, economic, social, and environmental factors related to the control and regulation of reservation and other tribal lands.

Fiscal years 1975–1977.—During this three-year period, it is estimated that $30 million will be required to administer the Act, together with an additional $30 million to establish the land use planning program for the public lands under title III.

Fiscal years 1975–1982.—At the rate of $100 million per year, grants *may* total $800 million for the eight-year period for which they are authorized by H.R. 10294.

COMMITTEE RECOMMENDATIONS

The Committee on Interior and Insular Affairs recommends the enactment of H.R. 10294 as amended. The motion ordering the bill reported favorably was adopted by a roll call vote January 22, 1974, with 26 votes cast for and 11 votes cast against. On reconsideration January 24, 1974, for the sole and specific purpose of considering two amendments and a substitute motion, the bill was re-reported by voice vote.

EXECUTIVE COMMUNICATIONS

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., February 15, 1973.

Hon. CARL ALBERT,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: The President announced today in his Environment and Natural Resources State of the Union Message to Congress his intention to propose legislation "To establish a national policy encouraging States to develop and implement land use programs." Enclosed is that proposed bill.[1]

We recommend that the bill be referred to the appropriate committee and that it be promptly considered and enacted.

Land use reform has received increasing public attention in recent years. President Nixon made it a keystone of his environmental program in his February 8, 1971, message to Congress in which he discussed the profound effect of land use decisions on our daily lives and "the institutional reform so badly needed."

The 92nd Congress made real progress toward developing sound Federal legislation on land use reform. Hearings held by the Interior Committees of both houses captured wide public interest and fostered extensive public debate on a variety of issues and proposals. The Senate Interior Committee reported out a bill, S. 632, which passed the Senate on September 19, 1972.

S. 632 as it passed the Senate was the product of the public debate and of a constructive dialogue between the legislative and executive branches. It incorporated, in our view, the principal features of the Administration's proposal which the President outlined in his February 8, 1971, message.

The progress which the 92nd Congress made in this field should be the springboard for the 93rd Congress, so that this important bill can be speedily enacted. The enclosed bill, therefore, is patterned on S. 632 as it passed the Senate. It incorporates the concept stressed by President Nixon two years ago that a principal thrust of the bill should be to encourage States to exercise their basic authority to deal with land use issues which spill over local jurisdictional boundaries. It leaves local jurisdictions in full control of local land use issues and carefully defines the Federal role to preserve the basic authority of the State to establish land use priorities.

The importance of the legislation forwarded herewith is to establish, at the State level, a framework within which specific programs to meet particular problems can be carried out in a fully coordinated manner and against a background of a comprehensive land use program which covers all the States' land and water resources. The point was repeatedly stressed in the hearings on this legislation that most of our present land use problems stem from a piecemeal, fragmented,

[1] The bill was introduced as H.R. 4862 on February 27, 1973. It is printed in full in the Hearings, Serial. No. 93–8. Two identical bills were introduced subsequently, H.R. 6894 and H.R. 7986.

and uncoordinated approach to land use decision-making. Unless we can reverse this pattern, we will not be able to meet the challenge which lies ahead of us of planning for the future growth of this country.

The Office of Management and Budget has advised that the enactment of the attached proposed legislation would be in accordance with the program of the President.

Sincerely yours,

ROGERS C. B. MORTON,
Secretary of the Interior.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., March 23, 1973.

Hon. JAMES A. HALEY,
Chairman, Committee on Interior and Insular Affairs, House of Representatives.

DEAR MR. CHAIRMAN: This is in response to your request for a report on H.R. 91, H.R. 2942, and H.R. 4862, bills which provide for establishment of a National Land Use Policy. These bills would authorize the Secretary of the Interior to make grants to assist the States to develop and implement State land use programs, to coordinate Federal programs and policies which have a land use impact, and to coordinate planning and management of Federal lands and planning and management of non-Federal lands. Both bills, H.R. 2942 and H.R. 4862, would establish a National Advisory Board on Land Use Policy, and H.R. 2942 would establish an Office of Land Use Policy Administration in the Department of the Interior.

The President's Environmental Message to Congress, dated February 15, 1973, proposed comprehensive new legislation to stimulate land use controls. The President proposed a National Land Use Policy authorizing Federal assistance to encourage the States, in cooperation with local governments, to protect land of critical environmental concern, and to regulate the siting of key facilities such as airports, highways, and major private developments. The proposal was submitted to Congress by the Secretary of the Interior and introduced in the House of Representatives on February 27, 1973 (H.R. 4862).

This Department has reviewed H.R. 91 and H.R. 2942, and the Administration's bill H.R. 4862, each proposing establishment of a National Land Use Policy. While we concur with many of the objectives of H.R. 91 and H.R. 2942, we strongly recommend enactment of H.R. 4862 since it is specifically oriented to present critical land use problems.

The Office of Management and Budget advises that there is no objection to the presentation of this report and that enactment of H.R. 4862 would be in accord with the President's program.

Sincerely,

J. PHIL CAMPBELL.
Under Secretary.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 18, 1973.

Hon. JAMES A. HALEY,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: We have received and reviewed a copy of Subcommittee Print No. 1 of the "Land Use Planning Act of 1973" and offer the following comments for the Subcommittee's use during the forthcoming mark-up sessions.

In general we feel that the print embodies most of the elements which we consider essential to a meaningful and effective land use bill. It establishes a Federal program to make grants to States to improve their land use planning capability through an expanded data base, public participation and better coordination mechanisms. It would require the State to develop methods to control the use of land in areas of critical environmental concern, the siting and use of land in areas impacted by key facilities, development and land use of regional benefit and large-scale development.

We offer the following recommendations which we feel would strengthen the legislation significantly:

1. *Consistency of State Programs.*—Section 202(a)(6) of the Administration's proposal requires States to establish methods for assuring that State and local programs and services which significantly effect land use are consistent with the State land use program. This is stronger than the language of section 104(a)(4) of the Committee Print which simply requires methods for coordinating such programs and services. Since Federal projects and activities, except in cases of overriding national interest, must be consistent with State land use programs it is appropriate to require no less of State and local projects.

2. *Public Education.*—True land use reform will not be accomplished without basic changes in fundamental attitudes. This will require a long term process of public education. We recognize explicitly the importance of public education in sections 202(a)(8) and 202(b)(5) of the Administration's proposal. The Committee Print requires "public involvement" which is defined in section 412(o). We would add "a process for public education" to the examples included in that definition.

3. *New Communities.*—New communities are unique in that they offer the best opportunity to establish positive patterns of land use or to irrevocably condemn an area to negative patterns of development. The Administration's proposal includes a requirement that States develop a policy for influencing the location of new communities and specifically lists new communities in the definition of large-scale development to insure that States will exercise control over their development. We recommend similar provisions be added to the Committee Print.

4. *Funding Level and Sharing Ratio.*—The Committee Print provides funding authorization for three years as follows: $35 million for fiscal year ending June 30, 1974 and $75 million for each of the next two fiscal years. It also provides for grants to Indian tribes of $2 million for fiscal year 1974 and $6 million in each of the next two fis-

cal years. We would extend the authorization to cover an eight year period as the Senate has done but at a level we feel is more commensurate with the more selective approach of the Committee Print here under review. The level of funding which we recommend is $40 million annually for the first two years, $30 million annually for the next four years, $20 million for the next year and $10 million for the last year. This formula would provide a higher level of funding initially during the start-up period when we anticipate greater costs in bringing a program into full operational status. We would authorize "such sums as necessary" for grants to Indians since our experience at present is inadequate to estimate what those needs will be.

We would also urge that the sharing ratio be reduced from 75% to 66⅔% for grants to States. Many States have already indicated a willingness to budget significant amounts for land use planning and we feel this trend should be encouraged not discouraged.

5. *Grants to Indian Tribes for Land Use Planning.*—We concur that the Federal Government's trust responsibility over Indian lands should include land use planning assistance. In order to assure, however, that the grant recipients under this bill are those reservation Indians for which the Federal Government has trust responsibility, we would amend the definitions of "Reservation and other tribal lands" and "Indian tribe" set out in section 412 (g) and (h) as follows:

> "(g) 'Reservation and other tribal lands' means all lands within the exterior boundaries of a reservation held in trust for an Indian tribe and for individual Indians.
>
> "(h) 'Indian tribe' means the governing body of an Indian tribe, band, pueblo, colony, rancheria, or community recognized as eligible for the special program and services provided by the Secretary for Indians because of their status as Indians."

These amendments serve another important purpose which is to exclude from the scope of the tribe's land use plan land within the exterior boundaries of the reservation which is owned in fee by (1) individuals (Indian and non-Indian) or (2) the State or (3) the Federal Government. The authority of Congress to subject the first two categories of land to tribal control is doubtful. We feel it would be unwise to place Federal land within a reservation under tribal controls.

We feel that land held in trust for individual Indian allottees within a reservation should be covered by the tribes land use plan, since it is not covered by the State land use plan and since to exempt what amounts in many cases to sizable checkerboarded inholdings would completely frustrate any attempt by the tribe to accomplish comprehensive planning on the reservation. To assure that the individual allottee would have the same remedy against unreasonable regulatory action by the tribe as a private citizen has against the State and to protect the United States from liability in such cases we recommend the following new section in Title IV:

"SEC. —. In exercising authority under this Act, the tribe shall be deemed to consent to suit by an allottee alleging that the tribe has exercised land use controls adversely affecting his land under this title

in excess of that reserved to the several States by the United States Constitution. The United States shall not be liable for any action by the tribe under authority conferred by this title."

7. *Judicial Review of Secretary's Denial of Grant to a State.*—Considerable concern has been expressed regarding the rights of States to appeal the Secretary's denial of a grant. We strongly oppose the creation of a non-judicial review mechanism, as for example by an *ad hoc* board of State governors, Federal officials or other "impartial" citizens. We believe the institution most qualified to review administrative decisions is the courts. To explicitly recognize this role and to provide a procedure tailored for this purpose we recommend including the following section:

"SEC. —(a). Any State which receives notice that the Secretary, in accordance with the procedures provided in this Act, has determined that the State is ineligible for grants pursuant to this Act, or, having found a State eligible for such grants, subsequently determines that grounds exist for withdrawal of such eligibility, may, within sixty days after receiving such notice, file with the United States Court of Appeals for the circuit in which such States is located, or in the United States Court of Appeals for the District of Columbia, a petition for review of the Secretary's action. The petitioner shall forthwith transmit copies of the petition to the Secretary and the Attorney General of the United States, who shall represent the Secretary in the litigation.

"(b). The Secretary shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code. No objection to the action of the Secretary shall be considered by the court unless such objection has been urged before the Secretary.

"(c). The court shall have jurisdiction to affirm or modify the action of the Secretary or to set it aside in whole or in part. The findings of fact by the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may order additional evidence to be taken by the Secretary, and to be made part of the record. The Secretary may modify his findings of fact, or make new findings, by reason of the new evidence so taken and filed with the court, and he shall also file such modified or new findings, which findings with respect to questions of fact shall be conclusive if supported by substantial evidence on the record considered as a whole, and shall also file his recommendations, if any, for the modification or setting aside of his original action.

"(d). Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that such judgment shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28, United States Code."

8. *Authorization of Funds to Administer.*—The Committee Print does not authorize appropriations for administration of the Act. We recommend that $10 million annually beginning in the year of enactment be authorized for this purpose.

9. *Federal Actions in the Absence of State Eligibility.*—In order to assure that the purposes of the Act are carried out with respect to

any major Federal action significantly affecting the use of non-Federal lands in the absence of a State planning process found eligible for funding under the Act, we recommend the inclusion of section 205(b) from the Administration's proposal which requires a public hearing by the responsible Federal agency.

10. *Title III—Public Lands.*—Title III combines two basically separate objectives: One to establish a management policy for the public lands and, two, to require public land managing agencies to develop land use plans for lands they manage which parallel the planning process to be developed by the States under this bill. We would prefer not to combine public land management policies with land use planning legislation for non-Federal lands.

We agree with the second objective and in fact have provided for it in our proposed National Resource Lands Management Act which is pending before the Committee as H.R. 5441 and would apply to the 60% of Federally owned lands administered by the Bureau of Land Management. The Administration's land use proposal, H.R. 4862 also achieves this objective by requiring, except in cases of overriding national interest, that Federal actions be consistent with State land use plans. In addition, the land managing bureaus of this Department, the National Park Service, Bureau of Land Management, Bureau of Sport Fisheries and Wildlife, and Bureau of Reclamation all conduct planning processes for the lands they manage which generally conform to the requirements of section 303(c) of the Committee Print.

We believe the establishment of extensive land use policy and planning requirements for Federal land would be more appropriately treated in separate legislation and we recommend the Committee delete Title III in its entirety. If the Committee disagrees with this recommendation, we would appreciate an opportunity to submit amendatory language.

11. *Standard of Review.*—Section 104(d)(1) prohibits the intercession of any Federal agency in "management decisions" made under the "comprehensive land use planning process". The bill does not, however, indicate what constitutes "management decision". The apparent purpose of this section is to limit the Secretary's review authority and in that sense it has merit. We have testified that the Federal review would be procedural rather than substantive. In order to provide a positive standard of review, we recommend the deletion of section 104(d)(1) and the substitution of language similar to that in section 306(g) of the Senate passed bill.

12. *Suspension of Authority to Terminate Grants.*—Section 107(e) permits the Secretary to temporarily suspend the operation of his authority to terminate assistance to States under the Act on a finding of ineligibility. Suspension must be justified by a determination that it is necessary for the public health, safety or welfare.

We believe that realistic time requirements should be set and adhered to. The authority to suspend them inevitably weakens the deadlines and could jeopardize the entire Act. Therefore, we would delete this suspension authority.

13. *Interagency Advisory Board.*—We recommend the inclusion of section 301 from the Administration's proposal. This will facilitate the coordination of Federal programs relating to land use planning.

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14. *Guidelines.*—Section 401 provides for the issuance of guidelines to Federal agencies and the States by the Council on Environmental Quality. The purpose of the guidelines is to provide direction on matters relating to development and environmental protection involving all Federal agency actions which impact the use of land. For this reason, we recommend that the President be given authority to designate the agency to issue guidelines as provided in H.R. 4862.

15. *Recommendation as to National Policy.*—We believe this section is unnecessary, particularly in view of the anticipated biennial report to Congress on current and emerging problems of land use.

16. *Biennial Report.*—This section also contains more detail than is necessary. We urge the Committee to consider the Administration's language in H.R. 4862, which requires a biennial report to the President and Congress "on land resources, use of land, and the current and emerging problems of land use."

17. *Pollution Standards.*—We recommend the inclusion of the requirement of section 202(a)(15) of H.R. 4862 in section 104, in order to insure that decisions made pursuant to the State land use planning process will not result in a violation of any applicable air, water, noise or other pollution standard or implementation plan.

18. *Definition of Key Facilities.*—"Frontage access streets and highways of State concern" should be included in the definition of "key facilities" since such highways are a principal inducer of growth and urbanization.

19. *Subdivision and Land Development.*—Section 104(b)(6) specifies procedures and special requirements for "subdivisions and land development", which is undefined by the bill. In order to insure that reference is only to subdivisions and development of *more* than local concern, we recommend that this section be limited to "large-scale development" as defined in the Act and that this definition include the term "large-scale subdivisions".

Conclusion.—We hope this will be of assistance. We will be happy to work with the Committee staff to develop draft language to implement these suggestions and to assist in any way possible to promote this critical environmental legislation.

Sincerely yours,

JOHN KYL,
Assistant Secretary of the Interior.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., July 20, 1973.

Hon. JAMES A. HALEY,
Chairman, Committee on Interior and Insular Affairs, House of Representatives.

DEAR MR. CHAIRMAN: We would like to offer our comments and suggestions on Subcommittee Print No. 1 of the "Land Use Planning Act of 1973."

The Department of Agriculture strongly supports enactment of legislation to strengthen State land use planning capabilities. The Committee Print includes the essential provisions needed to meet this

objective. To further strengthen and clarify the proposed legislation we urge that the Subcommittee consider the specific recommendations of the Secretary of the Interior set forth in his separate letter to you. We would like to highlight those suggested changes which are of major concern to the Department of Agriculture.

COORDINATION OF FEDERAL AND STATE PLANNING

The Subcommittee Print, in sections 108 and 303(d), recognizes the merit of coordinated and complementary planning efforts on the part of Federal land management agencies and State and local planning entities. We believe it important that there be active dialogue, coordination, and negotiation during the planning for adjacent Federal, State, and private lands. We recommend that section 303(d) be eliminated and that the coordination requirements focus on section 108(a) of the Committee Print. This section more clearly recognizes that the objectives and purposes of the Federal lands, such as the National Forest System, involve issues of overriding national interest.

INTERAGENCY ADVISORY BOARD

The Interagency Advisory Board included in section 301 of the Administration's proposal (H.R. 4862) would aid the coordination of Federal programs relating to land use planning. This Department has major responsibilities for assuring the production of adequate food, and fiber, and other natural resources and services for national needs. Our participation on the Interagency Board will help blend these national goals with the critical planning processes which will determine how they are met. We therefore recommend section 301 be included in the Committee's bill.

PUBLIC LANDS POLICY

Express planning directives for public land managing agencies, such as those in Title III of the Print, would give appropriate emphasis to the authority we have to plan for the use and management of the National Forest System. Although these directives and some of the policy statements in Title III are compatible with existing authority relating to the National Forest System, we believe it would be more appropriate to consider these matters in separate legislation. However, should the Committee determine it necessary to include Federal lands planning direction in this legislation, we would appreciate an opportunity to offer a substitute which we would develop in conjunction with the Department of the Interior.

We would be glad to work with your staff as you consider and deal with our suggestions.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

J. PHIL CAMPBELL,
Under Secretary.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., October 1, 1973.

Hon. JAMES A. HALEY,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for this Department's views on H.R. 10294, the "Land Use Planning Act of 1973."

This bill is the result of hearings and deliberations by the Subcommittee on the Environment, which has voted to recommend favorable action on it by the full Committee. We understand the full Committee action has been scheduled for October 3, 1973.

As we have stated many times, the Administration regards land use legislation as the top environmental priority. We are continually finding that the solution to a wide variety of our environmental, social and even economic problems depends ultimately on rational land use planning and regulation by the States.

With the exceptions noted below, H.R. 10294 meets the basic objectives of the Administration as originally presented in our proposed bill H.R. 4862. The Subcommittee has done an excellent job in resolving the many difficult issues involved and in producing a very workable piece of legislation. We urge the Committee to report the bill favorably, provided it is amended as recommended below.

1. *Funding Level and Cost Sharing Ratio.*—As we stated in our letter dated July 18, 1973, regarding Subcommittee Print No. 1, we urge that the funding and sharing ratio be reduced to a level which is more commensurate with the selective approach to land use controls which the Subcommittee has wisely adopted. The funding which the Administration recommends of $230 million over 8 years for two-thirds matching grants to States together with such sums as may be necessary for grants to Indian tribes, instead of $848 million which H.R. 10294 provides for those purposes, is fully adequate to accomplish the objectives of this legislation. The increase of more than $600 million above the Administration compromise proposal is not acceptable at a time when reduced Government spending is essential to combat inflation. The President emphasized in his September 10, 1973 message on legislation before the Congress that a responsible compromise on funding for land use grants needs to be worked out. We believe our proposed increase from the $170 million recommended earlier to the present level of $230 million offers such a compromise. We feel that after we have accumulated experience under this program we will be in a better position to more accurately assess the funding needs and that if an adjustment is warranted, we will recommend it at that time consistent with the principle that the States should ultimately assume the full financial burden of their land use program.

As a technical matter we are concerned that section 409 might be construed to preclude appropriations for administration during the fiscal year in which the bill is enacted. We will supply language to the Committee to correct this problem.

2. *Coastal Zone.*—We are aware of a concern that has been expressed by some members of Congress that H.R. 10294 may nullify or undercut the Coastal Zone Management Act and that subsection 412(f) which provides that nothing in the Land Use Act shall be construed to

be in derogation of the Coastal Zone Management Act is not adequate to meet this concern.

The Administration is squarely on record as endorsing the concept of two separately funded and viable programs: A land use program, which is primarily land oriented, administered by the Department of the Interior and a coastal zone management program, primarily water oriented, administered by the Department of Commerce.

President Nixon recognized the coastal zone as a unique national resource when he signed the Coastal Zone Management Act of 1972 into law and, with enactment of the Land Use Planning Act of 1974 imminent, an appropriation to implement the Coastal Zone Management Act of 1972 in the current fiscal year has been requested.

To remove the concern that has been expressed, we are proposing the attached amendments to the land use bill which will delete from coverage under the land use bill those areas of paramount concern under the Coastal Zone Management Act provided the coastal State has an approved coastal zone program by June 30, 1977.

To repeat, the Administration supports two separate but coordinated programs with appropriate and continuing funding, with a view to their eventual incorporation into a single department, the proposed Department of Energy and Natural Resources.

Attached hereto are specific language changes to implement this recommendation.

3. *60-Day Delay of Guidelines or Regulations going into Effect.*—Section 403(d) provides that no guidelines, rules or regulations shall take effect until Congress has had 60 days to disapprove them by resolution adopted by both Houses. In addition to the constitutional questions raised by this departure from the established legislative process, these provisions would introduce undue delay and uncertainty in the orderly implementation of the land use program. We strongly recommend modification of the language to simply require the rules, regulations, and guidelines must lie before the Congress for 15 days before they are to take effect. Such requirement would be fully consonant with the oversight function of Congress and its committees.

4. *Indians.*—We agree with the provision of section 412(e) that this bill should not alter existing law as to the jurisdiction of Indian tribes over land use within their reservations since this question is presently in litigation in several States. Section 202(b)(1), however, appears to suggest that new authority is being given to the tribes subject to the Secretary's approval. We feel that this is inconsistent with section 412(e) and, therefore, we recommend that section 202(b) be deleted in its entirety.

5. *Subdivision and Land Development.*—Section 105(g) specifies procedures and special requirements for "subdivisions and land development", which is defined by the bill. In order to insure that reference is only to subdivisions and development of *more* than local concern, we recommend that this section be limited to "large-scale development" as defined in the Act and that this definition be amended to include the term "large-scale subdivisions".

6. *Pollution Control Laws.*—We recommend deleting the phrase "when not inconsistent with the purposes for which public lands are dedicated and administered" from section 303(b)(7). We do not believe that compliance with pollution control laws or standards is in-

consistent with the purposes for which public lands are dedicated or that an exemption from those laws should be provided.

7. *National Policy Recommendations.*—Section 404 authorizes and directs the Secretary to study and make recommendations within three years as to national land use policies. Studies of this type rarely if ever produce the kind of panacea that is too often expected of them. More often they become an excuse to defer hard decisions until the study is complete.

Moreover, the types of issues which the study would address are already being looked at by a number of Federal agencies. In light of the sweeping scope of the topics to be considered for such studies, we recommend that section 404(a) be amended to delete "The Secretary, through the Office," and substitute "The President or an agency designated by him." Since it appears that virtually all Federal agencies could be affected by such studies, it is appropriate for the authority to be placed in the President. Also to avoid creating false hopes that the study will produce simple answers to difficult and long standing problems, we would insert "a process for the formulation of" before "national land use policies" in line 17 on page 40 and line 4 on page 42.

8. *Guidelines.*—Section 403(a) provides for the issuance of guidelines to Federal agencies and States by the Council on Environmental Quality. It is unclear how these guidelines, as they pertain to the States, will relate with the regulations which the Secretary will promulgate under section 403(b). We feel that guidelines to the States should be issued by the Department of the Interior as the Federal administering agency. We urge, therefore, that the Committee omit reference to the States and local governments from section 403(a) and insert in section 403(b) before "the guidelines formulated under subsection (a)" the phrase "the requirements of this act and."

We would also urge the Committee to substitute "the President or an agency designated by him" for "the Council on Environmental Quality" in section 403(a). Since the guidelines are to resolve disputes between executive cabinet level department, it is appropriate that the authority flow to the President.

9. *Implementation Techniques.*—In reorganizing what is now section 106 of the print, language was omitted which specified that the States could implement their land use programs either through general purpose local governments or by direct State action. These are two common methods that States are presently using to implement land use programs and we feel that the legislation should reflect them.

10. *Office of Land Use Policy Administration.*—We recommend deleting the detailed provisions for administering this program in Title IV. The Administration has proposed a reorganization of the Executive Branch to create a new Department of Energy and Natural Resources. Even in the absence of major reorganization, however, we feel it is important to preserve sufficient flexibility in the organization to enable us to modify the organization structure as efficiency and other factors dictate.

Specifically, we recommend (1) deletion of section 401 in its entirety, (2) amending section 402(b) to delete all references to "The Director of the Office of Land Use Policy and Planning Administration" and

substitute in lieu therefor "an individual appointed by the Secretary", (3) deletion from section 402(c)(2) of the words "the Council on Environmental Quality", and (4) deletion of section 402(d) in its entirety.

In fact, we intend to administer this program through an office similar to that called for in section 401. We have established an Office of Land Use and Water Planning whose primary function during its brief existence has been to develop the capability to implement this legislation and which would operate independently of other bureaus in the Department. Nonetheless, we believe it highly desirable, as already noted, to retain organizational flexibility to meet changing conditions.

11. *G.S.A.*—In view of the fact that G.S.A. has been given a major Federal role in developing Federal property policy, we recommend that that agency be added to the Inter-Agency Advisory Board under section 402(b)(1).

12. *State Share of Cost.*—The bill is unclear as to whether the States may use Federal funds from other sources to meet the cost of the land use program not funded under this Act. We feel that States should not be able to do this. Accordingly, we recommend deleting the second sentence in section 410(c) of H.R. 10294 and substituting the following:

> The remaining share of the cost shall be borne by the State in a manner and with such funds or services as may be satisfactory to the Secretary.

This is standard language found, for example, in the Land and Water Conservation Fund Act, 16 U.S.C. 4601–8(c).

13. "*Estimated*" *Cost.*—We recommend deleting the word "estimated" from line 4, page 45, since the Federal share should be based on actual not estimated costs.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

JOHN C. WHITAKER,
Under Secretary of the Interior.

COASTAL ZONE AMENDMENTS

1. Amend page 49, line 10 to add:

"which coordination, at the option of the State, may include extension of the applicability of the provisions of this Act jointly to activities and areas in the coastal zone as defined by section 304 of the Coastal Zone Management Act of 1972; *Provided, however*, this Act shall not be applicable to transitional and intertidal areas, salt marshes, wetlands, and beaches unless a coastal State does not have an approved program under the Coastal Zone Management Act of 1972 by June 30, 1977 and the Secretary of Commerce has not determined that the State is making satisfactory progress in developing such an approved program; *Provided, further*, that in no event shall this Act be applicable to coastal waters as defined in the Coastal Zone

Management Act of 1972 other than transitional and intertidal areas, salt marshes, wetlands and beaches. States which have an approved management program for its coastal zone pursuant to section 306 of the Coastal Zone Management Act of 1972 and a land use planning process for the remainder of the State in accordance with this Act shall be deemed eligible for grants under this Act for the purposes of sections 110 and 112 of this Act."

2. Amend page 50, lines 1 and 2, to delete the words "coastal zones; significant beaches, dunes and estuaries."

ADDITIONAL VIEWS OF MR. UDALL, MR. MEEDS, AND MR. DELLENBACK

We strongly support the report of the Committee recommending enactment of H.R. 10294, the Land Use Planning Act of 1974. Because of the controversial nature of sanctions and the fact that they affect programs under the general jurisdiction of Committees other than the Committee on Interior and Insular Affairs, we did not oppose deletion of these provisions of Section 112 as the bill was ordered reported. We do, however, wish to go on record as favoring sanctions in the Act and to give notice of our intention to offer an amendment on the floor to maintain these provisions in the bill.

We do not believe it is rational for the Congress to attack the matter of land use planning in a piecemeal manner. The time has come to develop an overall strategy that takes into account not only airports and highways but also the other critical areas to which attention is directed in H.R. 10294. As the accompanying table shows, the Federal Government is now paying out to our States alone (Arizona, Washington, and Oregon) over $338 million annually in highway, airport, and land and water funds. Yet, we continue to hear of poor siting of roads and jetports, and inadequate land and water conservation programs. It is therefore not unconscionable to ask that a State qualify under the Land Use Planning Act if it is to continue to receive its full entitlement under the three programs the sanctions address.

It is not anticipated that sanctions would be applied except on rare occasions—for the imposition of sanctions admits the failure of their essential role. The force of the sanctions is in the climate of the incentives which they tend to create. Some States, such as Oregon, have been leaders in developing comprehensive land use planning processes. In these States sanctions should be seen as offering a mild inducement to continue to build on a soundly established base. In the other States we view sanctions as offering encouragement to State and local governments to work together to develop such processes. Furthermore, where they are applied, it is hoped that the sanctions in our amendment will result in only a temporary withholding of a small fraction of certain Federal funds.

The sanctions we propose to offer on the floor are similar to those in H.R. 10294 as introduced (see general discussion of sanctions in this report). There are three differences, however:

1. The percentage of funds affected would be reduced from 7, 14, and 21 percent to 3, 6, and 9 percent for the first, second, third and later years a State remains ineligible.

2. Rather than "suffering a *reduction*" in entitlement as was proposed by the Administration, which would result in a State losing the funds forever, our amendment would provide for a *withholding* of funds that then may be recovered at such time as a State regains

eligibility. Our sanctions would take nothing from a State; we would instead withhold a small percentage of the funds until a later date—a delay rather than a final reduction.

3. We do not propose affecting the highway act in any other way. Chairman Blatnik of the Committee on Public Works objected to deletion of other language in the highway act, and we are inclined to agree with him.[1]

We are offering a sanctions amendment on the floor of the House rather than favoring the reporting out of a bill with sanctions in it because we believe the floor provides the proper forum for a meaningful discussion of the issue, a place where the inter-jurisdictional ramifications as well as the philosophical basis can be fully debated. We urge adoption of our amendment.

A tabulation by State showing the magnitude of the entitlements which could be withheld if the provisions we propose were invoked, prepared by the Department of the Interior, follows:

State	Approximate apportionment for—				
	Highway	Airport	Land and water conservation fund	Total	3 percent
Alabama	$93,728,180	$2,420,794	$2,969,703	$99,118,677	$2,973,560
Alaska	53,194,400	9,788,163	1,577,115	64,559,678	1,936,790
Arizona	83,893,880	3,361,928	2,337,039	89,592,847	2,687,785
Arkansas	42,618,240	1,632,386	2,147,967	46,398,593	1,391,957
California	405,687,660	21,125,059	12,592,377	439,405,096	13,182,152
Colorado	90,901,860	4,686,659	2,533,383	98,121,902	2,943,657
Connecticut	112,016,940	1,504,937	3,042,423	116,564,300	3,496,929
Delaware	22,955,520	199,957	1,724,373	24,879,850	746,395
Florida	154,655,760	9,021,726	4,980,411	168,657,897	5,059,736
Georgia	116,598,440	7,554,639	3,388,752	127,541,831	3,826,254
Hawaii	38,881,500	3,321,607	1,856,178	44,059,285	1,321,778
Idaho	27,322,400	1,717,226	1,681,650	30,721,276	921,638
Illinois	255,964,240	11,785,051	7,193,826	274,943,117	8,248,293
Indiana	83,572,440	2,880,899	3,837,798	90,291,137	2,708,734
Iowa	63,740,180	2,106,702	2,519,748	68,366,630	2,050,998
Kansas	65,961,840	2,143,824	2,348,856	70,454,520	2,113,635
Kentucky	72,687,580	2,698,772	2,709,729	78,096,081	2,342,882
Louisiana	120,819,300	3,167,953	3,083,328	127,070,581	3,812,117
Maine	25,156,600	1,013,090	1,774,117	27,943,807	838,314
Maryland	145,342,820	2,053,775	3,531,465	150,928,060	4,527,841
Massachusetts	143,770,900	4,131,418	4,477,734	152,380,052	4,571,401
Michigan	190,757,000	6,433,976	5,991,219	203,182,195	6,095,465
Minnesota	112,567,700	3,895,433	3,145,140	119,608,273	3,588,248
Mississippi	47,549,780	1,614,508	2,166,147	51,321,435	1,539,643
Missouri	109,133,780	5,121,797	3,633,273	117,888,850	3,536,665
Montana	49,446,880	2,733,485	1,694,376	53,874,741	1,616,242
Nebraska	38,863,860	2,060,821	2,047,068	42,971,749	1,289,152
Nevada	29,059,940	3,124,634	1,708,011	33,892,585	1,016,777
New Hampshire	21,022,960	381,949	1,714,374	23,119,283	693,578
New Jersey	153,296,500	2,180,033	5,415,822	160,892,355	4,826,770
New Mexico	45,132,920	2,551,459	1,821,636	49,506,015	1,485,180
New York	294,378,280	17,050,492	11,251,830	322,680,602	9,680,418
North Carolina	94,032,960	3,502,431	3,446,928	100,982,319	3,029,469
North Dakota	28,601,300	1,407,795	1,640,745	31,649,840	949,495
Ohio	189,507,500	6,108,161	6,896,583	202,512,244	6,075,367
Oklahoma	52,939,600	2,420,570	2,535,201	57,895,371	1,736,861
Oregon	98,544,880	2,843,505	2,409,759	103,798,144	3,113,944
Pennsylvania	248,678,920	7,879,165	7,555,608	264,113,693	7,923,410
Rhode Island	38,258,220	505,022	1,959,804	40,723,046	1,221,691
South Carolina	45,823,820	1,675,008	2,514,294	50,013,122	1,500,393
South Dakota	29,596,980	1,582,465	1,660,743	32,840,188	985,205
Tennessee	78,104,040	3,280,465	3,095,145	84,479,650	2,534,389
Texas	262,990,840	12,709,289	7,056,567	282,756,696	8,482,700
Utah	50,819,860	2,206,494	1,991,619	55,017,973	1,650,539

[1] In a letter dated October 3, 1973, to Chairman Haley of the Committee on Interior and Insular Affairs, Mr. Blatnik said that he did not believe the Secretary of Transportation should have authority to withhold approval of highway projects unless the State acquires control of marginal land along a highway, which Section 112(c)(2) of H.R. 10294 at least implied.

State	Approximate apportionment for—				3 percent
	Highway	Airport	Land and water conservation fund	Total	
Vermont	19, 535, 320	337, 207	1, 574, 388	21, 446, 915	643, 407
Virginia	168, 787, 360	2, 789, 577	3, 576, 915	175, 153, 852	5, 254, 615
Washington	138, 071, 220	3, 504, 580	3, 136, 050	144, 711, 850	4, 341, 355
West virginia	79, 984, 660	1, 088, 005	2, 117, 970	83, 190, 635	2, 495, 719
Wisconsin	79, 975, 840	3, 111, 887	3, 421, 476	86, 509, 203	2, 595, 276
Wyoming	27, 913, 340	1, 696, 164	1, 541, 664	31, 151, 168	934, 535
District of Columbia	76, 801, 620	214, 654	738, 138	77, 754, 412	2, 332, 632
Puerto Rico	18, 500, 440	2, 568, 341	1, 397, 163	22, 465, 944	673, 978
American Samoa		20, 593	55, 454	76, 047	2, 281
Guam		582, 611	71, 816	654, 426	19, 632
Hawaii (territory)		1, 146, 250		1, 146, 250	34, 387
Trust Territory of the Pacific Islands		64, 825		64, 825	1, 944
Virgin Islands		873, 284	66, 362	939, 646	28, 189
Contingency			8, 442, 740	8, 442, 740	

MORRIS K. UDALL.
LLOYD MEEDS.
JOHN DELLENBACK.

DISSENTING VIEWS

In his message to Congress on September 17, 1973, President Nixon stated that "land use control is perhaps the most pressing environmental issue before the nation," and on January 30, 1974, the President called passage of national land use policy legislation a "high priority" of his administration. Mr. Nixon is probably correct in referring to this bill as one of the most important before the Congress—regrettably for all of the wrong reasons.

Its importance stems from the fact that the use of land is basic to almost every type of human activity. From farming and timber supplies to homesites in urban and suburban areas, from the space a worker occupies in the factory or office building to the production of energy—everything man does requires land in one way or another.

The dangers arise, because, as we are beginning to realize in the case of air and water pollution laws, the effects of such laws go far beyond cleaning the air and water. Similarly, land-use regulatory legislation goes far beyond finding better ways to use land.

Because the authority to control land use rests with the States and their subdivisions, and because the right to own and use property is an integral part of that bundle of rights that make the term "individual liberty" meaningful in this country, the Land Use Planning Act of 1973 will have a truly momentous impact on the freedom of action of State and local governments and on our liberties.

Few people would probably disagree with the intent of H.R. 10294—to encourage and assist the States to plan for the wise and balanced use of its land resources. However, we believe that the actual provisions of this measure bear little relation to its professed intent.

The sponsors of H.R. 10294 claim that it encourages and assists the States to shoulder their responsibilities for land-use planning. In fact, it goes far beyond encouragement and assistance. Title I of the bill contains line-after-line of requirements the States must meet before the Secretary of Interior can judge their plan "adequate."

The requirements of Title I, in effect, establish a national land-use policy to be imposed upon the States under threat not only of withdrawing Federal funds for land-use planning, but also the threat of other economic sanctions. It is a fiction to speak of encouraging and assisting the States with a bill that is filled with criteria, guidelines, and suggestions for defining an "adequate" comprehensive land use planning process. In addition, should the sanctions amendment of the gentleman from Arizona (Rep. Udall) be adopted, the States would then be threatened with economic clubs should they not comply with the bill's requirements.

Importance

In order to understand the importance of this proposal, one must understand that the legislation before us is merely the first step on the

road toward more public control over the use of private property. Whatever the final disposition of this legislation, the most vocal elements on the issue of land use are calling for more public control over private property.

One force being heard is the Task Force on Land Use and Urban Growth which issued its report "The Use of Land" to the Council on Environmental Quality last year.

In its report to the Council, the Task Force included several recommendations relating to property rights. The report recommended *an end to the landowner's traditionally presumed right to develop his property regardless of environmental and social costs* (a right presently restricted by local zoning laws). The right to property, according to the report, should not include the right to develop it and tough restrictions should be placed on the use of privately owned land. It added that restrictions will be little more than delaying actions if the courts do not uphold them as reasonable measures to protect the public interest.

The report also stated that landowners *should be required to bear the restrictions without compensation by government*—that the courts should interpret the "taking clause" of the Fifth Amendment to the Constitution to mean that property must be physically taken before compensation is considered. Simply stated, this means that any governmental restriction placed on the use of privately owned land should be upheld by the courts as a valid exercise of the police powers and, therefore, noncompensible. For example, if a community desires open space in a particular area and the land in question is privately owned, the landowner should bear the cost of the open space and not the community.

The Task Force report also stated that the courts should presume that any change in the physical environment is likely to have adverse consequences that are difficult to foresee, and that those desiring the change should be required to describe the effects of the change.

The report stated that the Supreme Court should "re-examine its earlier precedents that seem to require a balancing of public interest against land value loss in every case, and declare that when protection of natural, cultural or esthetic resources or the assurances of orderly development are involved, a *mere loss* in land value will never be justification for invalidating the regulation of land use."

It is against this background that H.R. 10294 requires that states designate and control land and land uses which are of more than local concern or which are of critical concern. The control and regulation of these areas, as designated by the state, could, in some cases, entail restriction of use of private land to the point that no use or no economic use would be allowed. This would, of course, diminish the market value of the property in question.

The trend is, we believe, clearly toward more public control over the use of private property—a sort of social contract, if you will, inherent in the purchase of land. If we are to move in this direction, as the Task Force report and others suggest, it is essential that the people be fully informed with balanced accurate information in order to bring about a moderate evolution in public policy in the area of land use that balances economic, social, and environmental considerations, that achieves public goals, and that allows for the

maintenance of a healthy private property institution which constitutes the cornerstone of our liberties and our system of government.

The right to property and the value of property ownership consist mainly of the right to develop it. Thus the Land Use Planning Act and its Senate companion affect the traditional meaning of private property beyond abstract arguments over the use, non-use, and misuse of land. The true ramifications of this measure go to the essence of our free enterprise system and individual liberties.

Property rights/State police powers

H.R. 10294 is keyed to the exercise of the police powers of the various States to implement the provisions of the State land-use planning process. Traditionally, diminution of use of private property occasioned by a State's exercise of its police powers for the general welfare—as in the case of zoning—has been treated by the courts as not giving rise to a right to compensation on the part of the landowner. Although one use may be prohibited, the owner can utilize the land in another manner so as to attempt to justify his investment.

H.R. 10294 gives rise to a novel situation—in which two important provisions of the bill play roles. One is the definition of "areas of critical environmental concern," and the other is the requirement that the State have authority to regulate the use of land in such areas, as well as in other areas if the proposed use is inconsistent with the land-use plan. The Senate bill (S. 268) requires that the States be able to prohibit the use of such land. The term "areas of critical environmental concern" carries the connotation that no use is allowed in such areas. Moreover, the definition of these areas is openended so that any type land area could be so designated.

The proposal, however, does not specify that the State in prohibiting the use of land in certain areas should utilize its powers of eminent domain—with compensation to the owners. It is conceivable that a State lacking adequate funds for compensation might proceed (to avoid sanctions should they be adopted) to implement the provisions in the bill which may require a partial or total denial of use for the land owner under its police powers—its zoning powers. This tactic would circumvent the issue of compensation, because zoning is not normally a compensable land use control mechanism. It would place upon the property owner the burden of instituting an inverse condemnation proceeding in order to gain a judgment that the State's action was an invalid exercise of its police powers requiring just compensation.

The whole point of the "taking" clause is to prevent the government from confiscating the property rights of the individual. It places the government in the same status as any stranger to the property, and after all, government consists of a great many strangers. It is a prohibition against theft by government in a sense comparable to innumerable other laws that prohibit theft by any of its citizens.

Certainly, over the years the courts have upheld as legal many laws which deprive owners of valuable property rights. Still the "taking" clause has tended to prevent the outright confiscation of property and many zoning and other regulatory laws have been invalidated.

There is no doubt but that it cost more money to buy property than to take it, and this obvious fact has been a cause of concern to those

who believe that government can use property more wisely than its private owner. The recent report distributed by the Task Force on Land Use and Urban Growth expressed concern that the taking clause would make excessively expensive the land use policies they would like adopted and consider in the public interest. They propose that more land be restricted for open space and for other purposes they deem desirable and find the taking clause to be a serious obstacle to these objectives. In like manner, this Bill should present the same concerns since the government is mandating that some properties will be undevelopable and will have to be retained in their present state. Yet the Bill cavalierly states that the owner's rights have not been diminished nor is there any Federal money for compensating him. Thus, the state is under the mandate to prohibit development and presumably must bear the cost unless we are to reconsider the Fifth Amendment and rule that henceforth development rights for private property rest with the community, rather than with the property owners.

The inevitable result of increasing the number and amount of controls on land use is to terminate the freedom of the individual to acquire and own property—in all likelihood, the freedom considered most important by most of the people. Nor is it fair that the burden for providing the presumed welfare of others should be borne by the owners of only those properties used for public purposes. The accident of ownership and location would select those persons in society to carry the burden of paying for benefits that will accure to others. It amounts to a rather crude way of redistributing wealth on a most unfair and irrational basis.

In additon, if private land is to be taken without compensation, there will be no limitation upon its acquisition. Thus, for whatever reason the state or Federal government should deem appropriate, if there is no cost involved, they can restrict its use thereby removing a great deal of land from development or production to the detriment of business, employment, industry, agriculture, housing, etc. America, the land of parks and open space, would also be America, the land of worse housing and higher rents. When the government must pay for the land which it in effect condemns, its insatiable appetite is curbed, thereby creating a more appropriate and equitable allocation of our resources.

Obviously, the incentive for owners and developers to own and use land for productive purposes would also be destroyed. Why own land or contemplate using it if it is subject to confiscation at the whim of government? Or, if one does own land zoned for certain purposes, he should rush to use it before the law is changed. Such actions will result in a more chaotic market.

Notwithstanding the taking problems, the designation of particular uses for land will effectively remove that land from the marketplace. Historically, the marketplace has defined the highest and best use for a particular piece of land; H.R. 10294 undermines this tradition and consequently stifles private ownership.

EFFECT OF H.R. 10294 UPON OUR QUALITY OF LIFE

Air, water, and land are integral parts of man's existence. It is becoming increasingly clear, especially in light of our current energy

shortfall, that our laws designed to prevent air and water pollution may be damaging our total environment because their substantial social and economic side-effects were ignored when these measures were drafted.

The dangers inherent in H.R. 10294 are even greater. It places the physical environment in the dominant position in the land use decision-making process. The proposal is lopsided in its concern for the physical environment while almost ignoring the needs of our citizens for economic development, for meeting our energy demands, for developing our natural resources, for feeding our people, and for housing.

H.R. 10294 even goes so far as to require the states to draw up their land use plans so as to implement the dictates of the Environmental Protection Agency relative to transportation control plans, indirect sources, and non-degradation.

If the federal government is to indirectly tell the States what their land use plans are to be, those requirements should at least provide for a balance between differing land uses, values, and needs. We do not believe that H.R. 10294 provides for such a balance.

The State in drawing up its statewide plan and the Department of the Interior in formulating national land use policies is each given a number of factors to consider. Most of these relate to preserving the physical environment such as insuring the protection of the quality of the environment, encouraging the preservation of ecosystems, protecting open space for public use or appreciation, etc. Very little is said about giving consideration to the economic and social implications which will follow such decisions. This basic underlying problem is further complicated by the whole problem of what land use planning is or should be.

Land use planning generally implies an orderly, rational arrangement of or for the use of land for the present or the future directed or controlled by detached experts in planning. The assumption is that there is something measurable about planning or that there are some standards which are to be followed. However, this assumption is exceedingly difficult to substantiate and few of even its most ardent proponents make the effort. Is there some precise measurement available to determine the "best" use of some or all of the land, of whether a certain parcel is better suited for trees, lagoons, recreation, or the housing of persons? By now, after fifty years of zoning experience in this country, it should be clear that there are respectable, distinguished and knowledgeable planners who would disagree about any or all of a particular set of possible uses for a particular piece of land. Planning is unquestionably highly subjective, lacking those standards and measurements that are the requisites of a scientific discipline. Accordingly what goes under the name of planning is an opinion by someone who has studied and is learned in the creation, growth, and development of cities. The country's zoning experience raises serious doubts that such training and knowledge provide any special insights either in evaluating the present or in predicting the future.

Planners confront serious problems in fulfilling their responsibilities. Theory and education alone cannot substitute for the actual experience of making practical decisions and being euphoric about or suffering through their consequences. Unfortunately, in lieu of

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hard information, planners in most instances have to rely on their own experience and background including, whether conscious or unconscious, their political, social, and economic biases. Thus, although the biases of the planners selected to work at the state and national levels to draw up the land use plans will more than likely reflect the environmental orientation of this Bill, the drafters have largely overlooked the economic and social aspects of the environment which are of more concern to more persons.

This last statement is perhaps most dramatically illustrated by the recent events in our own country. When this Bill was being drafted, great concern was being voiced by well-known groups about the deterioration of the physical environment. In response at the national level, the National Environmental Policy Act was enacted, strict pollution regulations were set out by the Environmental Protection Agency which will result in great hardships for those of our citizens who live in areas which are dependent on the car for transportation.

In California, the electrorate passed a coastal conservation act which recently was the basis for blocking the construction of two nuclear facilities that would provide a substantial portion of the future electrical needs for Southern California. Bluffs, water-carved canyons and some marine life have been saved, if the decision is not overturned, but thousands of barrels of oil will have to be burned annually—if it is available, that is—to obtain the same amount of energy, a solution scarcely compatible with clean air objectives. Alternatively, these nuclear reactors will have to be located at another site, a costly delay which will delay construction for many years. Once again, there will be a confrontation with environmentalists, since almost anywhere such construction takes place, it will have to be at what some group of persons somewhere will feel to be the expense of nature, wildlife, scenic view, or unusual terrain, etc. These are all commendable objectives. However, they do not remotely compare in any society's priorities to employment, buisness, and health, all of which may be seriously threatened if only the physical environment is considered in making land use decisions. What conceivably can be more important than providing sufficient food, clothing, and shelter for human beings?

THE EFFECT OF H.R. 10294 ON CONTROL AND REGULATION OF LAND USE

The effect of H.R. 10294 is to begin a gradual movement of planning and regulation from the local to the state level. The notion that land use within an entire state can be successfully planned should be one repugnant to the intelligence. In most states, hundreds of thousands of square miles are involved, and a state agency is bound to have less knowledge and information about individual parcels than one at the local level. Countless decisions would be made without adequate information. Just evaluating potential uses and demands for a fraction of a mile within a metropolitan area may cost thousands of dollars and many hours and might still leave many uncertainties.

In addition, it is questionable whether this Bill is designed merely to encourage and enable the States to adopt land use regulations. Each state in order to qualify for Federal grants is to establish a comprehensive land use planning process and to develop explicit substantive policies to guide land use. However, whether a particular state is

eligible for the Federal grants involved is determined by the Department of the Interior pursuant to guidelines and regulations to be set out by them. Thus, by retaining the power of the purse, the Federal government has in effect reserved the power to direct and affect the state planning process and its implementation. This is, of course, directily antithetical to our traditional concept that the responsibility for land use decisions should rest at the local level.

What is wrong with land use control at the state or Federal level? The whole philosophy behind putting this responsibility at the local level is that those at the local level are more knowledgeable and more interested in the fate of the land in their area than those who are located at a greater distance. Who has more interest in how a particular area is developed and who is better able to make the decisions regarding that development than the persons who actually live there? Rather than have planners from the state or Federal agency dictate from without what the future of a certain area will be, the persons actually involved have made the decision whether their locality, recognizing the advantages and disadvantages, should have a narrow economic base or whether a particular lagoon should be used for recreation, bird watching, or housing. To remove these decisions to the state or Federal level precludes taking into consideration the special problems, wishes, and concerns of the persons who know the area best—the local citizens and their elected officials.

Summary

Although this legislation does not call for national land use policies per se, it does exert very strong federal controls over how this country will develop its urban, suburban, and rural lands. We believe that federal advice on these matters will inevitably evolve into federal dictates. Once the Congress opens the door by conditioning the receipt of federal dollars upon submission of "adequate" state land use plans, we believe that the Constitutional responsibility and guarantee to the states that they deal with their own internal affairs will be but a fiction in this most critical area—the use of land.

The proponents of this legislation argue that changing land use requirements and public needs necessitate changes in present land use decisionmaking procedures and institutions; and that to avoid shaping the nation's future by incremental, ad hoc decisionmaking, the uses to which land resources are to be dedicated, there must be guidance by wise planning and management at all levels of government.

Some proponents believe that "the land use planning and management institutions of the past have left a legacy of uncoordinated, haphazard, and inefficient land use patterns. We contend that while our land use patterns, to be sure, are not perfect and do not conform to the planner's rulebook, they may be one price of democratic government.

We believe that this proposal will eventually result in the demise of private property rights and increase federal encroachment on state sovereignty.

Senators Hansen, Fannin, and Bartlett state in their minority views on S. 268 that it "would effectively preempt state and local rights to plan and regulate land uses. It would shift the traditional responsibilities from the local and state governments to the federal government."

They believe that the critical issue in the revolution of land use planning is how far the use of property can be restricted without compensating the property owner for diminution of value; or in other words, when does a restriction become a taking?

These Senators who led the fight against this legislation in both the committee and on the floor conclude their remarks by saying: ". . . we are not prepared to agree with those who believe that only 'Washington' possesses brainpower and capability to cure the ills of our nation. We have long relied on our states for purpose and strength and we will continue to believe our system of government works best when local prerogatives are preserved." We concur.

SAM STEIGER.
STEVE SYMMS.
JOHN N. HAPPY CAMP.
DON YOUNG.
HAROLD RUNNELS.
DAVID TOWELL.
BOB BAUMAN.
WILLIAM M. KETCHUM.

A VIABLE ALTERNATIVE

The objections I have frequently cited relative to H.R. 10294 do not deter me in my belief that this Nation must find and develop new ways to plan for the wise and balanced use of our land resources. But these effects must be consistent with the framework of our Federal system and the guarantees of the Constitution. I believe that it is possible to bridge the gap between the intent of the proponents of H.R. 10294 and the actual provisions of that measure. H.R. 11325 achieves such a purpose. It encourages and assists the states to formulate wise and balanced land use plans without making federal funds contingent upon the content of the state plan. H.R. 11325 brings the provisions and the effects of land use legislation back into line with its stated intent to encourage and assist the states.

The proponents of H.R. 10294 are constantly reassuring everyone that the States will have almost total control in developing their land use plans and that the Federal government's role will be limited to overseeing their activities, but a study of the actual wording points out the unlikeliness of a passive Federal role.

H.R. 10294, as reported from the Interior and Insular Affairs Committee, still contains line after line of requirements, criteria, instructions, and suggestions that the States must consider or comply with before the Secretary will decide if a State is eligible to receive a grant.

If the Secretary rules that a State has not followed these Federal requirements in developing its land use policy, he can withhold future grants, and if Mr. Udall is successful in restoring the sanction provisions on the floor, the Secretary may also withhold unrelated Federal funds. The sanction provision that was defeated in the committee called for withholding funds in amounts up to 21 percent in three areas of Federal funding: (1) airport and airway developments, (2) Federal highways, and (3) land and water conservation. Mr. Udall has announced that he will be offering an amendment on the floor to restore sanctions.

If we are to have land use planning legislation, it should do only what it professes to do and no more. Legislation of this type can easily become a tool by which the Federal government intervenes in still another area of essentially State and local responsibility.

Federal legislation in this area of State and local responsibility should be written with a minimum of Federal controls. State and local governments should be free to carry out their constitutional duties and to decide for themselves how their needs can best be met.

H.R. 11325 restores the proper balance between the original intent and the effects of this legislation.

Both bills authorize the Secretary of the Interior to make grants to the States to assist them in setting up their land use plans, but instead of requiring states to follow numerous and restrictive require-

ments in developing their plans (as H.R. 10294 calls for), H.R. 11325 allows the states to decide for themselves the range and content of their plans. Under H.R. 11325, the content of a State's land use plan will not be dictated from Washington but will be formulated by state and local officials.

There are no sanction provisions in H.R. 11325. The Federal government should not be given this coercive, economic "stick" to force the states into compliance if they choose not to participate in the program.

There is strong language in H.R. 11325 that will insure that private property rights will remain unchanged. Under H.R. 11325, not only must nothing in the act diminish the rights of owners of property as provided for by the Constitution of the United States (as H.R. 10294 states), but neither shall anything in the act diminish the rights of owners of property as provided for by the Constitution and laws of the State in which the property is located. American citizens are guaranteed better protection of their property rights under State Constitutions and laws than under the United States Constitution. This language insures that the states will follow their existing laws in implementing this Act, and not be tempted as they would be under H.R. 10294 to use the provisions of the Act to circumvent these laws.

H.R. 10294 requires the Secretary of the Interior to tell the states which lands within each state he considers to be areas of critical environmental concern of more than local significance, while H.R. 11325 allows the states to determine what they consider to be critical areas.

The bureaucratic Interagency Land Use Policy and Planning Board has been eliminated from H.R. 11325, which should make the administering of this Act more efficient.

Also, the extremely high and wasteful funding levels have been reduced by 60 percent (from $100,000,000 per year to $40,000,000), and the number of years for funding has been cut from eight to five.

It is my plan to offer H.R. 11325 as a substitute for H.R. 10294 during House consideration of Land Use Planning Legislation.

SAM STEIGER.

[H.R. 11325, 93d Cong., 1st sess.]

A BILL To authorize the Secretary of the Interior to make grants to assist the States and Indian tribes to develop and implement land use planning processes; to coordinate Federal programs and policies which have land use impact; and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Land Use Planning Act of 1974".

TITLE I—ASSISTANCE TO STATES

PART A—FINDINGS, POLICY, AND PROVISION FOR GRANTS

SEC. 101. The Congress finds that there is an urgent need for land use planning in order to promote the general welfare, to secure a wise and balanced allocation of resources, and social, economic, and environmental well-being and the long-term needs of the Nation.

DECLARATION OF POLICY

SEC. 102. The Congress declares that it is the policy of the Federal Government, in cooperation with the several States and their political subdivisions and other concerned public and private organizations, to use all practicable means in order to—

(a) assure that the lands in the Nation are used in ways that create and maintain conditions under which man and nature can exist in productive harmony and under which the environmental, social, economic, and other requirements of present and future generations of Americans can be met; and

(b) encourage and support the States to establish effective land use planning and decisionmaking processes that will assist informed consideration, in advance, of the environmental, social, and economic implications of major land use decisions and that provide for public education and involvement in such processes.

STATE LAND USE PLANNING GRANTS

SEC. 103. (a) The Secretary of the Interior is authorized to make annual grants, according to the provisions of section 107 to any State which has established an eligible State land use planning agency and an intergovernmental advisory council, to assist in the development and administration of a land use planning process.

(b) An eligible State land use planning agency is an agency which has primary authority and responsibility for the development and administration of a land use planning process in the State, and has a competent and adequate interdisciplinary professional and technical staff.

(c) An intergovernmental advisory council shall be composed of elected officials of general purpose local government, including elected officials serving on the governing bodies of regional organizations of general purpose local governments that are responsible for regional planning and coordination. One member, by majority vote of the members shall be chosen chairman. The council shall, among other things, have authority to participate in the development of the land use planning process and consult, review, and comment on the State land use planning process, and may make formal comments on annual reports which the State land use planning agency shall prepare and submit to it, which reports may detail all activities within the State conducted by the State government and local governments pursuant to, or in conformity with this Act.

PART B—LAND USE PLANNING PROCESS

STATE PLANNING PROCESS

SEC. 104. An eligible State land use planning process is a planning process in which all land and other natural re-

sources within the State are considered, and which provides for—

(a) development of an adequate data base for land use planning;

(b) technical assistance and training programs for appropriate State and local agency personnel for the development, implementation, and management of State land use planning processes;

(c) substantial and meaningful public involvement on a continuing basis and the continued participation by the appropriate officials or representatives of local governments in all significant aspects of the planning process;

(d) methods for coordinating: The activities of all State agencies and local governments insofar as such activities relate to or affect land use; and activities or areawide agencies designated pursuant to regulations established under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334) and other regional agencies;

(e) methods to coordinate the activities of interstate agencies related to or affecting land use; the land use planning activities of local governments; in a coastal State the planning activities under the Coastal Zone Management Act of 1972; the land use planning process for Indian reservation and other tribal lands; and the land use planning activities of Federal public and land management agencies;

(f) the resolution of conflicts arising between the State land use planning process and the land use planning process for Indian reservation and other tribal lands by a three-member board: one member to be appointed by the State, one member by the Indian tribe, and one member by the consent of the State and the Indian tribe.

(g) methods to consider and evaluate the following factor:

(1) the nature and quantity of land to be used or suitable for agriculture and forestry; industry, including extractive industries; transportation and utility facilities; urban development, including the revitalization of existing communities, an adequate supply of housing within reasonable distance of employment, the continued growth of expanding areas, the development of new towns, the maintenance of adequate open space land in urban and suburban areas, and the economic diversification of communities which possess a narrow economic base; rural development, taking into consideration future demands for products of the land; and the health services, education, law enforcement, and other State and local governmental facilities and services;

(2) esthetic, ecological, geological, hydrological, and physical values and conditions (including soil types, water availability, and the presence of nonrenewable natural resources) that influence the desirability of various types of land use and development;

(3) recreational needs as shown in the statewide outdoor recreation plan required under section 5(8)(d) of the Land and Water Conservation Act (16 U.S.C. 4601, et seq.);

(4) the unique characteristics of areas within the State that have unusual national significance and value;

(5) the impacts on the local property tax base and revenues of State programs and activities, land use policies, and programs to be developed pursuant to this Act; and

(6) the requirements of the State, region, and Nation for adequate primary and secondary energy sources, including storage, transportation, and production; and

(h) the definition, identification, designation, and regulation of areas of critical State concern, large-scale development, land use of regional benefit, and areas suitable for or which may be impacted by key facilities.

IMPLEMENTATION

SEC. 105. (a) States are encouraged to utilize general purpose local governments, to implement the planning process and to utilize general purpose local governments, including regional units, for planning, review, and coordination purposes as to the regional implications of local plans and implementation programs. Wherever possible, States are encouraged to designate for purposes of review and comment that areawide entity designated pursuant to title II of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3331–3339) or title IV of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4201–4244; 40 U.S.C. 531–535).

(b) Nothing in this title shall be deemed to—

(1) permit a Federal agency to intercede in management decisions within the framework of a land use planning process;

(2) enlarge or decrease the authority of a State to control the use of any land owned by the Federal Government within the State, or of any land located outside the State; or

(3) diminish the rights of owners of property as provided by the Constitution and laws of the United States and by the constitution and laws of the State in which the property is located.

INTERSTATE COOPERATION

SEC. 106. The States are authorized and encouraged to coordinate State and local land use planning processes, policies, and programs, on an interstate basis: *Provided*, That entities or compacts allow for participation of Federal and local governments and agencies as well as property owners, users of the land, and the public, and shall be subject to the approval of Congress by the adoption of appropriate Acts.

PART C—FEDERAL ACTIONS

DETERMINATION OF ELIGIBILITY

SEC. 107. (a) Before making a grant to any State under section 103, the Secretary shall consult with and consider the views and recommendations of the heads of all Federal agencies whose actions significantly affect land use in the State, including the Departments of Agriculture, Commerce, Defense, Health, Education, and Welfare, Housing and Urban Development, Transportation, and Treasury; and the Atomic Energy Commission, Federal Power Commission, Environmental Protection Agency, Council on Environmental Quality, and the Executive Director of the Water Resources Council.

(b) The Secretary shall determine the eligibility of a State for a grant not later than three months following receipt of the State's application for its grant.

(c) Prior to making any grant to a State during the three complete fiscal year period following the enactment of this Act, the Secretary shall be satisfied that such grant will be used to develop a land use planning process under section 104, or, when developed, is proceeding to administer it.

(d) Prior to making any further grants after the three complete fiscal year period following the enactment of this Act, the Secretary shall be satisfied that the State has established a land use planning process and is adequately and expeditiously administering it.

(e) Each State receiving grants shall submit periodic reports on work completed and scheduled and such other information as the Secretary may request including suggestions as to the need for and form of national land use policies.

APPEAL PROCEDURE

SEC. 108. (a) Any State which receives notice that the Secretary, in accordance with the procedures provided in this Act, has determined that the State is ineligible for grants pursuant to this Act, or, having found a State eligible for such grants, subsequently has determined to withdraw such eligibility, may, within sixty days after receiving such notice, file with the United States court of appeals for the circuit in which such State is located, or in the United States Court

of Appeals for the District of Columbia, a petition for review of the Secretary's action. The petitioner to the Secretary and the Attorney General of the United States, who shall represent the Secretary in the litigation.

(b) The Secretary shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code. No objection to the action of the Secretary shall be considered by the court unless such objection has been urged before the Secretary.

(c) The court shall have jurisdiction to affirm or modify the action of the Secretary or to set it aside in whole or in part. The court may order additional evidence to be taken by the Secretary, and to be made part of the record.

(d) Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that such judgment shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28, United States Code.

CONSISTENCY AND COORDINATION OF FEDERAL ACTIONS

SEC. 109. (a) Federal projects and activities significantly and primarily affecting the use of non-Federal land including but not limited to permits and licenses, grant, loan, or guarantee programs, such as mortgage and rent subsidy programs and water and sewer facility construction programs, but excluding special and general revenue sharing, shall be consistent with land use planning processes which conform to the provisions of section 104, except in cases of overriding national interest as determined by the President.

(b) Any State or local government or applicant for a required Federal license or permit submitting an application for Federal assistance for any activity having significant land use implications in an area or for a use subject to a land use planning process in a State found eligible for grants pursuant to this title shall transmit to the relevant Federal agency the views of the State land use planning agency or the Governor and, in the case of an application of a local government, the views of such local government and the relevant areawide planning agency designated pursuant to section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 or title IV of the Intergovernmental Cooperation Act of 1968, as to the consistency of such activity with the program, except that, if a local government or applicant for required Federal licenses or permits certify an activity for which application is made has lain before the State land use planning agency or the Governor for a period of sixty days without indication of the views of the land use planning agency or the Governor, the application need not be accompanied by such views.

(c) Federal agencies conducting or assisting public works activities in areas not included in a State land use plan-

ning process in a State found eligible for grants pursuant to this title shall, to the extent practicable, conduct such activities in such a manner as to minimize adverse impact on the environment resulting from decisions concerning land use.

(d) All agencies of the Federal Government charged with responsibility for the management of Federal lands shall consider State land use programs prepared pursuant to this Act and State, local government, and private needs and requirements as related to the Federal lands, and shall coordinate the land use inventory, planning, and management activities on or for Federal lands with State and local land use inventory, planning, and management activities on or for adjacent non-Federal lands to the extent such coordination is not inconsistent with existing law.

TITLE II—ASSISTANCE TO INDIANS

INDIAN LAND USE PLANNING GRANTS

SEC. 201. (a) The Secretary of the Interior is authorized to make land use planning grants to any Indian tribe to assist them in developing their own land use planning process for the Indian reservation and other tribal lands of such tribe.

(b) A land use planning process for the Indian reservation and other tribal lands shall provide for—

(1) the preparation of an inventory of the Indian reservation and other tribal lands and their natural resources and the nature, quantity, and compatibility of such lands and resources required to meet economic, social, and environmental needs;

(2) the establishment of methods for identifying areas of critical concern; areas which are, or may be, impacted by key facilities; and any areas suitable for potential large-scale development;

(3) the establishment of arrangements for the exchange of data and information pertinent to land use planning with the Federal Government, State agencies in the State or States in which the Indian reservation and other tribal lands involved are situated, and neighboring local governments;

(4) the dissemination of information to and the assurance of participation of reservation residents and tribal members in the development of the land use planning process;

(5) the hiring of competent professional and technical personnel and, whenever appropriate, the use of special consultants; and

(6) methods to—

(A) assure control over use and development in areas of critical concern and areas impacted by key facilities and over large-scale development and development and land use for public facilities and utilities; and

(B) coordinate the land use planning process for Indian reservation and other tribal lands with the land use planning processes of the States within the boundaries of which the reservation or other tribal lands are located and with the land use plans of the public land management agencies where relevant.

(7) the resolution of conflicts arising between the land use planning process for Indian reservation and other tribal lands and the State land use planning process by a three-member board: one member to be appointed by the Indian tribe, one member by the State, and one member by the consent of the Indian tribe and State.

ELIGIBILITY

SEC. 202. (a) Prior to making any grant pursuant to section 201, the Secretary shall be satisfied that the tribe intends to expend such funds for the development of a land use planning process for the Indian reservation and other tribal lands of such tribe. After the three complete fiscal year period following the first grant to any Indian tribe, prior to making any further grants, the Secretary shall first be satisfied that the tribe has developed a land use planning process and is making good faith efforts to put the planning process into operation.

(b) (1) Except as provided in paragraph 2 of this subsection, in the implementation of its land use planning process, the governing body of each Indian tribe is hereby authorized to enact zoning ordinances or otherwise to regulate the use of the Indian reservation and other tribal lands of such tribe, subject to the approval of the Secretary.

(2) The authority conferred by paragraph 1 of this subsection shall not extend to Indian reservation and other tribal lands to the extent that land use planning and zoning jurisdiction over such lands in conferred by or pursuant to the Act of July 2, 1948 (25 U.S.C. 232); the Act of August 15, 1953 (67 Stat. 589, 68 Stat. 795, 72 Stat. 545); or titles II through VII of the Act of April 11, 1968 (25 U.S.C. 1303 et seq.), nor shall it modify or affect the provisions of the Act of November 2, 1966 (25 U.S.C. 416–416b).

TRIBAL REPORTING REQUIREMENTS

SEC. 203. Any Indian tribe receiving a grant shall report at the end of each fiscal year to the Secretary, in a manner prescribed by him, on activities undertaken by the tribe under this title.

ANNOUNCEMENT OF PROGRAM

SEC. 204. Within one year of the enactment of this Act, the Secretary shall make known the benefits of this title to all Indian tribes.

TITLE III—ADMINISTRATION

OFFICE OF LAND USE PLANNING

SEC. 301. (a) There is established in the Department of the Interior the Office of Land Use Planning (hereinafter referred to as the "Office").

(b) The Office shall have a Director who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the maximum rate as may be from time to time provided for level V of the Executive Schedule under section 5315 of title 5 of the United States Code. The Director shall have such duties and responsibilities as the Secretary of Interior may assign.

(c) The Secretary shall, through the Office—

(1) administer the grant in aid programs established under this Act;

(2) analyze the land resources of the United States and their use;

(3) analyze the results from this Act;

(4) cooperate with the public land management agencies, the States, local governments, interstate agencies, and the Indian tribes in the development of standard methods and classifications for the collection of land use information and in the establishment of land use information;

(5) develop and maintain a Federal land use information center;

(6) make the information developed and maintained in the Federal land use information center available to Federal, regional, State, and local agencies, and Indian tribes conducting or concerned with land use planning and to the public;

(7) consult with other officials of the Federal Government responsible for the administration of Federal land use planning assistance programs to States, local governments, and other eligible public entities in order to coordinate such programs;

(8) provide for and encourage public involvement in all aspects of Federal and State activities, plans, and programs to implement this Act;

(9) provide for consultation and shall consider the views of representatives of the Departments of Agriculture, Commerce, Defense, Health, Education, and Welfare, Housing and Urban Development, Transportation, and Treasury; and the Atomic Energy Commission, Federal Power Commission, Environmental Protection Agency, Council on Environmental Quality, and the Executive Director of the Water Resources Council in this issuance of guidelines, rules, and regulations pursuant to section 302.

GUIDELINES, RULES, AND REGULATIONS

SEC. 302. (a) The Secretary, not later than six months after the effective date of this Act, shall issue guidelines to the Federal agencies and the States to assist them in carrying out the requirements of this Act.

(b) Not later than nine months after the effective date of this Act, the Secretary, after consultation with representatives of States and, where appropriate, representatives of local governments and Indian tribes, shall publish proposed rules and regulations to implement the guidelines.

(c) No guidelines, rules, or regulations proposed under this section shall take effect until they have been submitted to the Congress, and sixty days during which the Congress is in session have passed without the adoption of both Houses of a resolution disapproving such guidelines, rules, and regulations.

RECOMMENDATION AS TO NATIONAL POLICY

SEC. 303. (a) The Secretary, through the Office, is authorized and directed to investigate and study the need for and substance of national land use policies. The Secretary shall report to the Congress within thirty-six months the results of the investigation and study conducted under this section, along with his recommendations of such legislation as he deems appropriate or necessary. The Secretary shall consider the need for policies which—

(1) insure that all demands upon the land, including economic, social, and environmental demands, are fully considered in land use planning;

(2) consider the long-term interest of the Nation and insure public involvement as a means to ascertain such interests;

(3) insure the timely siting of facilities and development necessary to meet national or regional requirements;

(4) encourage the conservation and diversity of the natural environment and the preservation of unique areas of national significance.

(b) In formulating his report to the Congress, the Secretary shall consider the suggestions of representatives of States and local governments and the views and recommendations of the heads of all Federal agencies which conduct or participate in construction, development assistance, or regulatory programs affecting or affected by land use.

BIENNIAL REPORT

SEC. 304. The Secretary shall report biennially to the President and the Congress on land resources, uses of land, and current and emerging problems of land use. Such report shall include the Secretary's evaluation of the effectiveness

of each State program for carrying out the requirements of this Act, and shall include an assessment of the economic, social, and environmental costs imposed in each State by inappropriate use and development in areas of critical State concern. With respect to grants under title II, the report shall detail all actions taken in furtherance of the title and on the impact on all other programs or services to or on behalf of Indians and the ability of Indian tribes to fulfill the requirements of the title. The report also shall include a summary of public involvement and participation by officials or representatives of local governments in all aspects of State and Federal activities pursuant to this Act.

UTILIZATION OF PERSONNEL

SEC. 305. Upon request of the Secretary, the head of any Federal department or agency is authorized to furnish the Secretary such information as may be necessary for carrying out his functions to the extent it is available to or procurable by such department or agency; and to detail to temporary duty with the Secretary on a reimbursable basis such personnel within his administrative jurisdiction as the Secretary requests, each such detail to be without loss of seniority, pay, or other employee status.

TECHNICAL ASSISTANCE

SEC. 306. The Secretary may provide, directly or through contracts, grants, or other arrangements, technical assistance to any State or Indian tribe found eligible for grants pursuant to this Act to assist such State or tribe in the performance of its functions under this Act.

HEARINGS AND RECORD

SEC. 307. For the purpose of carrying out the provisions of this Act, the Secretary may hold such hearings, take such testimony, receive such evidence, and print or otherwise reproduce and distribute so much of the proceedings and reports thereon as he deems advisable. The Secretary is authorized to administer oaths when he determines that testimony shall be taken or evidence received under oath. To the extent permitted by law all appropriate records and papers relevant to administration to this Act shall be made available for public inspection during ordinary office hours.

APPROPRIATION AUTHORIZATION

SEC. 308. (a) There are authorized to be appropriated to the Secretary of the Interior—

(1) for grants to the States under title I not more than $40,000,000 for each of the five complete fiscal years occurring immediately after the date of enactment of this Act;

(2) for grants to Indian tribes under title II not more than $3,000,000 for each of the five complete fiscal years occurring immediately after the date of enactment of this Act; and

(3) exclusively for administration of this Act, $8,000,000 for each of the three complete fiscal years occurring immediately after the date of enactment of this Act.

ALLOTMENTS

SEC. 309. (a) Grants to any one State made under title I shall not exceed, during any fiscal year, 75 per centum of the estimated cost, for such fiscal year, of developing and administering the land use planning process in such State.

(b) Grants under title I shall be allocated to the States on the basis of regulations of the Secretary which shall take into account all relevant factors, including but not limited to the amount and nature of each State's land resource base, population, pressures resulting from growth, land ownership patterns, extent of areas of critical State concern, and financial need.

(c) Grants under title I shall increase, and not replace, State funds presently available for State land use planning. Any grant under title I shall be in addition to, and may be used jointly with, grants or other funds available for land use planning, programs, surveys, data collection, or management under other federally assisted programs.

(d) Considering, among other factors, the degree of responsibility assumed, a State shall allocate a portion of its grant funds to the participating unit of government when a State utilizes—

(1) a local government for planning and review purposes associated with the development or amendment of State land use policies, standards, and criteria;

(2) general purpose local governments for implementation under section 105; or

(3) an interstate agency under section 106 in developing or implementing its land use planning process.

(e) Grants to any one Indian tribe made under title II shall be made in amounts of 100 per centum of the estimated cost of developing and administering the land use planning process applicable to reservation and other tribal lands of such tribe.

(f) No funds granted pursuant to this Act may be expended for the acquisition of any interest in real property.

FINANCIAL RECORDS

SEC. 310. (a) Each recipient of a grant under this Act shall make reports and evaluations in such form, at such times, and containing such information concerning the status disposition, and application of Federal funds and the development and administration of a land use planning process as the Secretary may require; and shall keep and make avail-

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able such records as may be required by the Secretary for the verification of such reports and evaluations.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of a grant that are pertinent to the determination that funds granted are used in accordance with this Act.

EFFECT ON EXISTING LAWS

SEC. 311. Nothing in this Act shall be construed—

(a) to expand or diminish Federal, interstate, or State jurisdiction, responsibility, or rights in the field of land and water resources planning, development, or control; nor to displace, supersede, limit, or modify any interstate compact, or the jurisdiction or responsibility of any legally established joint or common agency of two or more States, of a State and the Federal Government, or a region and the Federal Government; nor to limit the authority of Congress to authorize and fund projects;

(b) to change or otherwise affect the authority or responsibility of any Federal official in the discharge of the duties in his office except as required to carry out the provisions of this Act;

(c) as superseding, modifying, or repealing existing laws applicable to the various Federal departments and agencies which are authorized to develop or participate in the development of land and water resources or to exercise licensing or regulatory functions in relation thereto; nor to affect the jurisdiction, powers, or prerogatives of the International Joint Commission, United States and Canada, the Permanent Engineering Board, and the United States operating entity or entities established pursuant to the Columbia River Basin Treaty signed at Washington, January 17, 1961, or the International Boundary and Water Commission, United States and Mexico;

(d) as authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people;

(e) to change existing law with respect to the regulation or control by an Indian tribe or by any State or local government of the use of Indian or non-Indian owned land, including rights-of-way or water rights appurtenant thereto, within the reservation occupied by such tribe, or land held by an Indian tribe subject to a restriction on alienation; or to constitute an authorization for the regulation or control of the use of such Indian or non-Indian owned land, including rights-of-way or water rights appurtenant thereto; nor shall any of the provisions of this Act regulating land use activities of the Federal Government be construed to be applicable

to Indian reservations or lands held by the United States in trust for any Indian tribe; or

(f) as superseding, repealing, or conflicting with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451–1464). The provisions of this Act are in addition to and not in derogation of any land use planning, development, or administration activity under the Coastal Zone Management Act of 1972. Each coastal State, to the maximum extent possible, should coordinate any land use planning process developed by it under this Act with its coastal zone planning, management, and administration.

DEFINITIONS

SEC. 312. As used in this Act—

(a) The term "areas of critical State concern", as defined and designated by the State on non-Federal lands (excluding areas that are subject to the management activities of the Coastal Zone Management Act of 1972), and the term "areas of critical concern", as defined and designated by the tribe on reservation or other tribal lands, means areas where uncontrolled and incompatible development would result in irreversible damage to the environment, life, or property, or long-term public interest which is of more than local significance. Example of such areas are:

(1) Fragile or historic lands, where uncontrolled or incompatible development could result in irreversible damage to important, historic, cultural, scientific, or esthetic values or natural systems which are of more than local significance.

(2) Natural hazard lands, where uncontrolled or incompatible development could unreasonably endanger life and property.

(3) Renewable resource lands, where uncontrolled or incompatible development which results in the loss or reduction of continued long-range productivity could endanger future water, food, and fiber requirements of more than local concern.

(b) The term "development and land use of regional benefit" includes private development and land use for which there is a demonstrable need affecting the interests of constituents of more than one local government which outweighs the benefits of any applicable restrictive or exclusionary local regulation.

(c) The term "general purpose local government" means any general purpose unit of local government as defined by the Bureau of Census and any regional, intergovernmental, or other public entity which is determined by the Governor to have authority to conduct land use planning on a general rather than a strictly functional basis.

(d) The term "Indian reservation and other tribal lands" means all lands of a reservation held in trust for an Indian

tribe and for individual Indians, or held by an Indian tribe subject to a restriction on alienation.

(e) The term "Indian tribe" means an Indian tribe, band, pueblo, colony, rancheria, or community which receives or is eligible for special programs and services provided for Indians because of their status as Indians.

(f) The term "interstate agency" means a governmental agency established pursuant to law to which two or more States are a party and which carries out or is authorized to carry out programs related to land use planning or regulations, including agencies established by interstate and Federal-State compacts, river basin commissions established pursuant to the Water Resources Planning Act of 1965 (42 U.S.C. 1962–1962d–3), and multifunctional policy and planning organizations consistent with the policy in title IV of the Intergovernmental Cooperation Act of 1968.

(g) The term "key facilities" means—

(1) facilities open to the public which tend to induce development and land use of more than local impact. Examples of such facilities include—

(A) any airport accommodating regular, scheduled air passenger service, and other airports of greater than local significance;

(B) major interchanges between limited access highways, including interchanges between the Interstate Highway System, and frontage access streets or highways; and

(C) major recreational lands and facilities; and

(2) major facilities on non-Federal lands for the development generation and transmission of energy.

(h) The term "large-scale development" means private development on non-Federal lands which, because of its magnitude or the magnitude of its effect on the surrounding environment, is likely to present issues of more than local significance in the judgment of the State. In determining what constitutes "large-scale development" the State may consider, among other things, the amount of pedestrian or vehicular traffic likely to be generated; the number of persons likely to be present; the potential for creating environmental problems such as air, water, or noise pollution; the size of the site to be occupied; and the likelihood that additional or subsidiary development will be generated.

(i) The term "local government" means any "general purpose local government" as defined in subsection (c) hereof or any other public agency which has land use planning authority.

DISSENTING VIEWS OF HON. ROBERT E. BAUMAN

The Specter of Federal Control

Much of the debate over H.R. 10294 has centered around whether it actually provides for a substantial increase in federal authority in areas now reserved to the States. While some of the bill's sponsors would, I believe, like to foster such an increase in authority, the more practical matter of gathering majority support for the measure has compelled them to design wording which avoids the appearance of new federal suzerainty.

Thus, it was that proponents protested only mildly when the full Interior Committee overwhelmingly voted to delete the original Section 112 of H.R. 10294, which contained one of the most audacious proposals to be considered by any Congressional committee. This section (which proponents have announced they will seek to restore to the bill by amendment when the bill reaches the floor) created a system of "cross-over sanctions" which could be imposed by the Secretary of the Interior on *any* State which failed to submit to and comply with federal land use policies. These sanctions included, over a period of time, a reduction of up to 21% of the State's authorized funding of federal-aid highway funds, airport development funds, and Land and Water Conservation Act funds. Aside from invading the jurisdictions of several other Committees of the House, this sanctions proposal would literally bribe and force the States into compliance under pain of loss of funding of unrelated federal programs, a novel concept just short of the use of federal troops as witnessed in the late and unlamented Reconstruction.

But no matter how often this bill's advocates repeat the terms "encouragement" and "assistance" in regard to the federal government's relationship to the several States, it does in fact do more than that, and amounts to a significant extension of federal authority.

The plan is ingenious. It represents the classic "carrot and stick" approach, with a large, juicy, terribly inviting carrot, and a subtle, not-so-obvious stick. The States, many of which are already considering land use legislation on their own, are offered a federal grant of up to several million dollars a year to "assist" them in developing and implementing their plan. The offer is all but irresistible to State legislatures which often jump at the opportunity to finance the latest legislative fad with "free" money from Washington.

As a recent member of the Senate of Maryland with a record of resistance to such arguments, I am under no illusions about the collective will of my former colleagues, especially under pressure from budget hungry governors.

To qualify for the federal money under H.R. 10294, however, the State must first adopt a "comprehensive land use planning process"

which includes a long list of required elements. This "process" must include "a method of assuring that all State and local agency programs . . . are consistent with the State comprehensive land use planning process." (Sec. 104(e))

Thus numerous unrelated and slightly related state programs are made subordinate to the State's "comprehensive land use planning process," i.e., federal control.

Moreover, the "process" must include the designation of "areas of critical environmental concern," and the "development of *explicit substantive State policies* to guide the use of land" in such areas. (Emphasis added) The bill then lists what must be included among these explicit policies. (Sec. 104(i) (Sec. 105)

The legislation also tells the States in specific detail which areas must be designated "areas of critical environmental concern." These include "fragile or historic lands," which must include scenic and historical areas "natural hazard lands," which must include areas "with high seismic activity", a definition which takes in most of California, as well as many other areas; and "renewable resource lands," which covers "significant agricultural and grazing lands, and forest lands," a category taking in nearly any rural area east or west of the Rockies, and north or south of the Mason-Dixon Line.

Within this very broadly construed category of "areas of critical environmental concern," the States are required, by means of explicit policies, to "consider the environmental, economic and social impact of large scale subdivision or development projects," among other things. Again, these policies and regulations are spelled out in specific terms in the bill, leaving little for the States to decide on their own.

Those regulations and policies not already spelled out in the bill itself will come later, by edict, from the office of the Secretary of the Interior. (Sec. 402)

Thus, once the first federal dollar is accepted by a State, it is henceforth bound to implementing a land use plan according to quite specific and detailed federal requirements. The exact form of the policy-making to follow is specified by the federal government, with little, if any, latitude allowed either State or local agencies. The manner of implementation is subject to review by the Secretary of the Interior at the end of three years, and the "stick" he carries is the threat of withdrawal of nearly a billion dollars placed at his disposal over the next eight years, earmarked for state grants.

It is clear that claims by the bill's sponsors that the bill "does not permit a substantial increase in Federal authority over, or even Federal review of, State and local decisions concerning the use of land" are, quite simply, false. Similarly, it places a federally-dominated State government in a position of supremacy over the local government. The individual landowner is thus placed in the unenviable position of being impaled on the point of this inverted governmental pyramid.

Constitutional Issues

This bill raises a very real question of constitutionality unless language is added which provides for fair compensation of land owners

whose land values are adversely affected by the execution of the provisions of the bill.

Two Amendments to the U.S. Constitution are relevant here: the Fifth Amendment, which states that "No person . . . shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation," and the Fourteenth Amendment, which states that no State may "deprive any person of life, liberty, or property, without due process of law."

This constitutional guarantee gives rise to the "taking issue," the question of whether the issuance of a governmental regulation controlling the use of an individual's land, thereby affecting its value, constitutes being "taken for public use," and this requires compensation.

(The due process requirement is satisfied by several sections of the bill.)

Only one Supreme Court decision has dealt directly with this issue, *Pennsylvania Coal vs. Mahon* (260 U.S. 393 [1922]). The decision (written by Mr. Justice Holmes) specified that when the diminution of value of the affected land "reaches a certain magnitude, in most if not in all cases there must be an exercise of eminent domain and compensation to sustain the act. The decision concluded, "The general rule at least is, that while property may be regulated to a certain extent, if regulation goes too far, it will be regarded as a taking."

Limitations of space prevent going into supportive detail here, but it seems clear that there is much in H.R. 10294 which could result in requiring the States to implement policies amounting to a "taking" as defined by the Court. If such a finding is reached, "just compensation" is required under the Constitution. But no provisions are included in this bill as it is presently drawn to provide just compensation. Indeed, Sec. 409(e) prohibits the use of funds granted by this act for such a purpose.

Consequently, I will offer an amendment from the Floor during consideration of this bill by the whole House to provide for compensation to landowners if this act results in the significant diminution of the value of their land.

For those Members of Congress representing rural constituencies, the implications of the "taking" of large tracts of farms and forests under the guise of "land use" poses a serious and direct threat to the economic well-being of our citizens and their heirs. Indeed, such legislation smacks of the city dwellers' view that the countryside is to be preserved as a "sandbox" for their amusement, allowing the locals to sell tickets to the visitors but to do little else.

A Foot in the Door

To the slight degree that this bill is not a full-fledged national land use policy act, administered directly from Washington without the pretense of State and local involvement, it lays the groundwork for such a step.

It directs the Secretary of the Interior to "investigate and study the need for and form of stating national land use policies," and lists a

number of criteria which he must include (Sec. 403). He must report his findings within three years, "along with his recommendations of such legislation as he deems appropriate or necessary to establish national land use policies." He is also directed to recommend amendments to this act after the third year.

Thus, the door is wide open for the federal government to say, in three years, that this act just isn't enough; that more direct control is needed; that more power must be concentrated in Washington. To expect that the recommendations would be otherwise is both naive and short-sighted.

Centralization Versus Federalism

The implicit philosophical premise behind this act is that the States and localities are not capable of coming up with the kind of wise land use planning which only the federal government can provide. It should be obvious by now, after more than 40 years of increasing centralization of governmental power at the federal level, that Washington is not the repository of all wisdom. On the contrary, there is considerable evidence to support the opposite conclusion. The recent proposal by the FDA to ban the bicycle as a "banned hazardous substance" is only one example of federal regulatory bureaucracy running amuck.

The principle that local governments have the authority to regulate land use through zoning is well-established. It is accepted that the State also carries authority in this area on a regional basis. Where a question of land use bears upon two or more States, an interstate compact has been deemed appropriate, upon approval by Congress.

But H.R. 10294 introduces a dramatic shift in the balance of these powers among the various levels of government. Several amendments adopted by the Committee in its deliberations firmly transfer authority for land use planning to the State, at the specific expense of local governments.

Finally, with the introduction of federal authority in the realm of land use (except on Federally owned lands), this bill constitutes a vast new intrusion by the federal government in an area where powers are historically reserved to the States.

It is a lamentable contradiction that an Administration which has flown the banner of the "New Federalism" should now drag it through the quagmire of centralization.

The dramatic shift in power and responsibility embodied in this bill, together with the premise that Washington knows best, should mandate opposition to it on the part of every Member of Congress who retains a belief that the best government is that which is closest to the people it serves; that the States are more than mere administrative arms of the federal government; and that urban planners, having fouled their own nests, should not now be given carte blanche to go out into the countryside and foul the nests of the rest of us.

This bill substitutes rule by local elected officials with rule by bureaucracy. It appropriates $10 million a year for federal administrative expenses alone, and $10 million will buy a lot of bureaucrats. The

$100 million a year provided for grants to the states will buy quite a few more at that level. A more elaborately drawn plan for centralized planning by non-responsive bureaucracies may never before have been created. At a cost of $900 million over the next eight years, this measure proposes a professional government planner' dream. But it can only come at the expense of individual liberty, and the price is too high.

This bill is the most ill-advised piece of legislation to be considered by the Congress in recent times, and I recommend its defeat.

BOB BAUMAN.

MINORITY VIEWS OF REPRESENTATIVE STEVE SYMMS

The far-sighted men who founded the American Republic were men of hope. They knew liberty and self-government were fragile things. They knew that many a promising effort to achieve human freedom and happiness had fallen into the dark grasp of dictatorship and tyranny. Yet they had the courage to hope, the courage to dare, that future generations of Americans might live free from the scourge of centralized power over their lives.

And it was crusty John Adams who saw the farthest and clearest. Unlike Thomas Jefferson, with his infinite optimism about the nature of man, John Adams knew that the basic factor in the human equation was power. And he knew that the source of power was wealth and property.

"The balance of power in a society accompanies the balance of property in land," wrote the Quincy lawyer who twenty years later was to become the President of the United States. "The only possible way, then, of preserving the balance of power on the side of equal liberty and public virtue, is to make the acquisition of land easy to every member of society; to make a division of land into small quantities, so that the multitude may be possessed of landed estates. If the multitude is possessed of the balance of real estate, the multitude will have the balance of power, and in that case the multitude will take care of the liberty, virtue, and interest of the multitude, in all acts of government."

From these words of John Adams in 1776, to Jefferson's fight against primogeniture and entail in Virginia, to James Madison's observations on the new Constitution, to the great speech of Daniel Webster in 1820 on the founding of New England, again and again the thought recurs: for liberty to flourish, power and property must be widely distributed. If property is allowed to concentrate in the hands of a few, either the few will reign as feudal lords over the many, or the many will revolt and confiscate the property of others. In either case, all agreed, liberty and a republican form of government could not continue.

What, one might ask, does all this ancient history have to do with H.R. 10294, a harmless little bill to give money to the states to promote environmental protection and land use planning? The answer, upon reflection, suddenly becomes clear. This innocent-sounding bill will necessarily create, throughout all these fifty states, well-funded, well-staffed agencies of the government. These agencies, to succeed in their mission, must centralize power over property in their own hands. H.R. 10294 is not land use planning, but, in fact, land use control.

Each of these agencies will have a guiding testament—a statement of objectives reciting the lofty aims of "society". Each of these agencies will necessarily be staffed by planners, experts, and lawyers entrusted with the achievement of those lofty objectives. They will be

lavishly fueled with the taxpayer's money. They will have their own expert ideas of how society can be changed to make those objectives a reality.

These agencies will confront, from their own point of view, a deadly enemy—the free individual citizen who intends to pursue his own interest as he sees it, free from the instructions and exhortations of the experts and planners. This trouble-maker cannot be tolerated! He cares not a whit about the good of society. He is selfish, greedy, cantankerous. He scorns the idealistic blueprints prepared by the government planners. He has no greater concern than providing for his family and preserving what is left of his freedom.

That will invaribly be the view of those who will soon collect in these state land use agencies. They know that the free, independent individual has a habit of wrecking the grandiose schemes of the experts. That individual must become the target of every program funded under this legislation.

Certainly the right of property ownership is not absolute. A man may not waste and destroy his property in land. He may not use it so as to invade the similar rights of other property owners—by polluting the stream or destroying his neighbor's right to normal tranquillity. He has no right to use facilities financed by the public on his own terms.

But even with these ancient limitations, freehold property ownership still forms the basis of individual liberty and a republican form of government, human rights and property rights are inseparable. Now what is the effect of this legislation upon freehold property ownership? Nothing at all, say its supporters; however, in my opinion, they are wrong

For the state land use planning agencies created and fattened under this legislation can succeed only by invading the legitimate rights of private property owners.

The most basic of those rights is the right to use and enjoy. This right will now be regulated in the interests of society as a whole. The right to exchange will be destroyed as the right to use and enjoy is circumscribed. The "owner" will be allowed only the right to exclude, and that, perhaps, only for the time being.

For this bill will lay the groundwork for a New Feudalism. The duke and baron of old will be replaced by the State, supposedly acting in the name of "the people". Today's independent landowner will become the serf of tomorrow's New Feudalism.

Under the New Feudalism all real property will be not owned, but merely "held", at the sufferance of the State. Whatever the State thinks the land-holder must do in the people's interest, he will be forced to do. The New Feudalism will recreate the misery and bondage of an age long since mercifully forgotten.

This is no idle speculation. The State of Vermont, often cited as a leader in the environmental protection field, is in the final stages of implementing precisely the kind of "comprehensive land use planning process" envisioned in H.R. 10294. The State Environmental Board's draft land use plan, now before the Vermont legislature, purely and simply vests control over all non-urban land in an appointed board at the State Capitol. Towns will be required to zone themselves to the

satisfaction of these bureaucrats—or else the bureaucrats will zone each town the way they see fit. The plan vests full power over nearly all of Vermont's land in one concentrated spot. Not since the Middle Ages has one body exercised such control over the property of other free men.

This will be repeated in state after state once this bill has had a chance to do its evil work. The result will be the steady concentration of economic and political power in the hands of the State. The result will be the destruction of our liberties and of our form of government. For this reason, this harmless looking bill may well be the most revolutionary measure presented in this Congress in many, many years.

What is likely to happen is that these land use agencies will move boldly to concentrate in their own hands all power over private property. And since, by the terms of this bill, the state programs are ultimately accountable to the bureaucrats in Washington, it is almost certain that we will see increasing Federal control over all land use decisions, and thus Federal control over the liberty and independence of millions of property-owning Americans.

In 1966, in the heyday of the Great Society, an Assistant Secretary of the Interior gave a strangely prophetic speech in New Orleans. "It is obvious," he observed, "that we planners are approaching a state of complete frustration in our efforts to bring some order into the chaos of land use controls. County zoning is rapidly becoming completely discredited as an effective way of maintaining the proper balance between urban growth and a healthy environment."

The problem was so serious, said Assistant Secretary Holum, that unless the states act, they "will lose their last chance to be viable political entities."

Well, the Interior Department has apparently offered seven years of grace to act. Now it is moving to seize the power for itself. This bill is the instrument. It will centralize power over individual citizens in the government, and it will centralize the power of government in Washington. The design is clear. Those who support it now may well wonder years from now why they voted away the liberties of their constituents and the independence of their local governments, paving the road to serfdom with this new feulalism disguised as "New Federalism". I strongly recommend the defeat of this bill.

STEVE SYMMS.

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